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THE RIGHT OF PARENTS TO BRING UP THEIR CHILDREN IN CONFORMITY WITH THEIR RELIGIOUS AND PHILOSOPHICAL CONVICTIONS VS. THE ACTIVITIES OF THE PUBLIC AUTHORITIES IN THE FIELD OF EDUCATION UNDER THE EUROPEAN CONVENTION ON HUMAN RIGHTS

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The article discusses the duty of public authorities to respect parents' right to bring up their children in accordance with their religious and philosophical convictions in the field of education. The author presents the principles applicable to the interpretation of Article 2 of the Protocol No. 1 reconstructed on the basis of the judicial decisions of the European Court of Human Rights. After discussing the personal scope of the right to bring up one' children and explaining the meaning of the key concepts, the author goes on to analyse main problems that arose in the course of the application of the provision in question, such as the controversies on the substance and methods of teaching, compulsory attendance at courses with religious or philosophical flavor, religious instruction in public schools or duties of the public authorities towards private schools. Special emphasis is placed on the conflicts of interests between the state responsible to ensure the operation of the educational system and institutions whose purpose is to impart both objective knowledge and transmit to the students some fundamental values essential to the maintenance of a democratic society and the interests of the parents who wish to ensure to their children an education that corresponds to the greatest possible extent with their religious and philosophical convictions.

Key words: education, upbringing of the children in conformity with parents' convictions, religious instruction at school, prohibition of indoctrination.

1. Introduction

After four decades of relative insignificance cases related to freedom of religion have started to play an increasingly significant role in the jurisdiction of the European Court of Human Rights (hereinafter referred to as «the Court»). This can be explained by multiple factors; worth mentioning are social phenomena occurring throughout Europe such as (im)migration resulting in increasing ethnic and religious diversity. On the other hand progressing secularisation gives rise to reconsidering the issues of the relationship between state and church(es), including the place and role of religion in the public arena. An important sphere where religion has traditionally occupied an

important position and where sharp controversies emerge is the realm of education. This article discusses one aspect of this multi-faceted problem, namely the right of the parents to bring up their children in accordance with their religious and philosophical convictions that may enter into conflict with the objectives of the public authorities responsible for the operation of the public education system by means of which they desire to instill some values in children that are regarded as indispensable to the functioning of a democratic society. Given the mentioned social changes the discussed problems are supposed to gain even more importance, which is reflected by the increasing number of cases on that issues decided the Court.

The most relevant provision that deals with questions of education is Article 2 of Protocol No. 1 (hereinafter: (P1–2)). Pursuant to that stipulation «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». Article 2 (P1–2) constitutes *lex specialis* in relation to the Article 9 of the European Convention on Human Rights (hereinafter: ECHR) that sets forth the general right to freedom of conscience, religion and belief. That is why when alleging the violation of parents' rights in matters of education and teaching, there is no need to resort to Article 9 ECHR [1, p. 138]. The lack of an explicit guarantee of children's right to education and parents' rights in the field of religious and philosophical upbringing of their children in the main body of the Convention does not mean that its drafters were not interested in these issues or that they regarded them as not important enough to be included in the text of the Convention. This was rather caused by the fact that at the time of signing of the Convention in many signatory states the political dispute on an appropriate form of public educational system had not been settled yet. Main divergences in this field concerned the choice of principles underlying the public educational system, the scope of the right to education and the right to set up private schools including the rules of their subsidising by state authorities [6, p. 547]. In the context of the right to rear one's children in conformity with one's religious and philosophical convictions the most significant problem concerned the drawing up of a provision that would guarantee some rights to parents as persons primarily responsible to bring up their children and on the same time that would reconcile them with the powers of public authorities to shape the profile of the educational system [12, p. 185 et seq.]. It took the Contracting States almost three years (1949–1952) to reach a compromise on these issues but even after the signing of the Protocol No 1 in March 1952 many State-Parties made interpretative declarations and reservations. Throughout the operation of the Protocol No 1 the Strasbourg organs had many opportunities to pronounce on the scope of the right to education and thus to resolve the initial controversies outlined above. The jurisdiction has shaped the profile of this right by delineating the boundaries between the rights of the children, rights of the parents and powers of the public authorities. The objective of this article is to trace the interpretative activity of the rights of the parents in education adopted by Strasbourg organs and present it in the light of the conflicting interests of the children, the public authorities and the society.

2. Interpretation of Article 2 (P1-2) in the axiological context of the Convention

To begin with it is noteworthy that the structure of Article 2 (P1-2) is two-fold as it lays down two rights of a different character. The first sentence of the discussed provision sets out the right of the child to education. In the legal doctrine an opinion has been expressed that it is an only stipulation in the whole Convention that enshrines a cultural and social right. However, this view does not consider the negative wording of Article 2 (P1–2) («No one shall be denied the right to education») that indicates that the right set out therein should not be construed as a social or cultural right to education, but rather as a freedom in education [10, p. 685]. The second sentence of Article 2 (P1–2) lays down a right of the parents to bring up their children in accordance with their religious and philosophical beliefs which are to be respected by the public authorities in the education process. The individual right to bring up one's children have thus framed as a freedom from unduly interferences on the State. Even though at first glance both provisions seem to be independent and separate from one another, they are not to be interpreted in isolation. According to the Court, the substance of the Article 2 (P1–2) makes up an integral whole, where the right to education dominates in relation to the duty to respect parental rights. In consequence, the rights of the parents set out in the second sentence of Article 2 (P1–2) play a complementary function with respect to children's fundamental right to education, which should be adequately reflected in its interpretation [Belgian Linguistic Case, judgment of 23 July 1968, Appl. No. 1474/62; 1677/62; 1691/62; 1769/63; 1994/63; 2126/64; approvingly: 13, p. 531]. The holistic approach to the commented Article is justified by its primary purpose, which is not to preserve the religious integrity of the students, but rather to protect them against indoctrination on the part of the state [9, p. 71 and 133].

The right of the parents to have their religious and philosophical convictions respected by the State in education and teaching is intimately linked to the right to privacy (Article 8), freedom of religion (Article 9) and freedom to receive and impart information and ideas (Article 10) [Kjeldsen, Busk Masen and Pedersen,v. Denmark, judgment of 12 December 1976 Appl. No. 5095/71; 5920/72; 5926/72 para. 52; cf. Valsamis v. Greece, judgment of 18 December 1996, Appl. No. 21787/93; Esfratious v. Greece, judgment of 18 December 1996, Appl. No. 24095/.94; Seven Individuals v. Sweden, decision of 13 May 1982, Appl. No. 8811/79, DR 29/104]. That is why Article 2 (P1–2) is to be interpreted in the axiological context of the Convention that is an instrument designed to protect and promote ideals and values of a democratic society. The objective of Article 2 (P1–2) that emerges in the axiological context of the Convention taken as a whole is to ensure the pluralism in education, which is indispensable to preserve a democratic society [E. G. Folgero and Others v. Norway, judgment of 29 June 2007, Appl. No. 15472/02]. «The second sentence of Article 2 (P1–2) aims in short at safeguarding the possibility of pluralism in education which possibility is essential for the preservation of the «democratic society» as conceived by the Convention. In view of the power of the modern State, it is above all through State teaching that this aim must be realised» [Kjeldsen, Busk Madsen and Pedersen v.

Denmark, para. 50]. Although individual interests must on occasion be subordinated to those of a group, democracy does not simply mean that the views of a majority always have to prevail: it rather requires that a balance must be achieved which ensures the fair and proper treatment of minorities [Young, James and Webster v. the United Kingdom, judgment of 13 August 1981, Series A no. 44, para. 63]. With respect to education the balance between individual rights and public interests is achieved when access to education is guaranteed to everyone, especially to the vulnerable individuals or minority groups, and on the same time when appropriate measures are taken to preclude the abuse by majorities of their dominant positions. Pluralism requires respect for diverging views on education and upbringing. When attempting to reconcile the conflicting interests, the modern state has to assume a leading role. In order to ensure the fulfillment of this task the Convention imposes some negative and positive duties on the state authorities that are aimed both to protect individual rights and to ensure proper functioning of the society by preventing its disintegration.

Taking into account the abovementioned objectives the Court has noted that the state authorities may impose the compulsory education on individuals. This duty can be fulfilled by receiving education in public schools, in private schools or in other special form that would meet the established standards. For instance, the authorities can require that parents send their children to a school or that ensure for them an adequate level of education at home [H. v. the United Kingdom, decision of 06.03.1984, Appl. No. 10233/83, DR 37/105]. In this context the Court emphasised the importance of primary education not only as a manner of acquiring knowledge, but also as a vehicle of the integration of the pupils into society. On the same time the Court affirmed that the role of the compulsory school education is to preclude the disintegration of the society that would occur if some parallel sub-societies with different philosophical views came into existence. On this ground the Court dismissed an application of the parents who refused to enroll their child neither to public nor to private school because, among other things, they had some objections to sexual education and were concerned about the increasing violence at schools. The applicants decided to teach their children at home in accordance with a programme established by an institution that had not been recognised by the state as a private school. The Court pointed out that no common opinion as to education at home and compulsory school education had developed among the Contracting States. In consequence, the Court declared itself to be incompetent to disprove the statement of the state authorities that the legitimate objectives they pursued, i.e. to attain the desired degree of social integration and to develop the social experience of the student were achievable to a greater extent through the participation of the children in public education than by means of education at home. According to the Court, this assessment made by German courts lies within the margin of appreciation of the national authorities and is compatible with the jurisdiction of the Court on the importance of pluralism as a prerequisite for democracy [Konrad and Others v. Germany, decision of 11.09.2006, Appl. No. 35504/03].

3. Persons entitled under Article 2 (P1–2)

As stated above Article 2 (P1–2) presupposes the right of the parents to bring up their children in accordance with their convictions, which implies a negative obligation on the Contracting States to abstain from unduly interference. The parents' right to rear their children in conformity with their most intimate convictions is an integral part of their freedom of conscience, religion and belief set forth in Article 9 ECHR. Although the formative process of children to a high degree takes place within the framework of school education, the family background constitutes the primary point of reference as far as the upbringing is concerned. The parental rights to ensure the appropriate – in their opinion – upbringing and education to their children have their foundations in natural law. The Court explains that the role of the parents in this field is «to enlighten and advise their children, to exercise with regard to their children natural parental functions as educators, or to guide their children on a path in line with the parents' own religious or philosophical convictions» [Efstratiou v. Greece, para. 32]. Parents are those who are in the first place responsible for education and teaching of their children and in the discharge of that natural duty they may require that the State respects their religious and philosophical convictions [Folgero and Others v. Norway, para. 84e]. Since the natural relationship between a child and a parent provides a basis for parental rights, their enjoyment does not hinge on marital status of the persons entitled; the right to rear children in accordance with one's own convictions refers both to children born to married couples and to children born out of extramarital relationships. However, parents enjoy the said rights as long as they are entitled to exercise paternal authority. The limitation or deprivation thereof as well as the dissolution of an adoption entails *ipso facto* the curtailment or deprivation of the rights enshrined in Article 2 (P1-2), although even in this situation the duty of the public authorities to respect religious and philosophical convictions of natural parents has to be taken into account when making a decision on placing a child in a foster or adoptive family [6, p. 557]. Similarly, if parents' rights are limited in circumstances for which they are not responsible, for instance in case of an illness, and as a result their child has been entrusted to a foster family or to an educational institution, there is no reason why the child should not be brought up in conformity with religious and philosophical convictions of their parents [Olsson v. Sweden, judgment of 24 March 1988, Appl. No. 10465/83]. The general principle is that when the public authorities take over the care of a child, the parents do not automatically lose their rights under Article 2 (P1-2) [Olsson v. Sweden, para. 95; Ericksson v. Sweden, decision of 21.05.1997, Appl. No. 31721/96, para. 84]. The abovementioned judgments are in line with Article 20 of the U.N. Convention on the Rights of the Child that sets forth an obligation directed to State Parties to pay due regard to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background, in case the child has to be temporally or permanently deprived of family environment.

A legal person cannot derive any right form Article 2 (P1–2). In consequence, an application lodged by a private Christian school was found inadmissible *ratione personae* [Ingrid Jordebo Foundation of Christian Schools and Ingrid Jordebo v.

Sweden, decision of 06.03. 1987 Appl. No. 11533/87, DR 51/125]. The was allowed to run a six–year educational programme and subsequently applied to competent authorities for a permission to extend it to another three forms, which was rejected despite the interest on the part of parents and students. The Commission decided in a similar way in the case *Karnell and Hardt v. Sweden* [Decision of 17 July 1971, Appl. No. 4733/71] concerning the refusal to grant an exemption from a course in religious education that was filed jointly by a church and its members. Under the relevant domestic provisions a student could be exempted from religious instruction at school only if he or she belonged to a religious denomination that was given a permission by a competent educational authority to give classes in religion outside the public school system. Since the applicants belonged to a church who had not been granted such a permission, their children could not be exempted from religious instruction in public school. It is to be noted that the abovementioned decisions received criticism in the doctrine based on the assumption that if parents have the right to educate their children in conformity with their convictions, there are no reasonable grounds for denying the possibility of defending the individual rights with the help of associations of the individuals involved, such as a school or a church [13, p. 549].

4. Limitation to the rights of the parents to bring up their children in conformity with their religious and philosophical convictions

In contrast to Articles 8–11 ECHR, Article 2 (P1–2) does not provide any catalogue of grounds that justify the imposition of some limits in the enjoyment of the rights stipulated therein. This means that in the case some measures are taken in the field of education that entail the curtailment of the right of the parents, public authorities have a broader margin of appreciation when determining the requirements of public interest that justify the imposed restrictions. Nevertheless, in each case the national authorities have a duty to explain the nature and significance of the purpose of the public interest to be achieved by the envisaged measures [15, p. 323 et seq.].

Furthermore, in Article 2 (P1–2) there is no mention of children's rights. In particular, it provides no solution that would be applicable in a situation of conflict or tension between parents and children as to the direction of religious or philosophical education. On one hand, since the formula «every» used in the provisions of the Convention to denote the persons entitled is all-inclusive, there is no doubt that minors enjoy their own right to freedom of religion. The status of minors as a second applicant has been explicitly recognised by the Commission in cases concerning the violation of the right to freedom of religion lodged by the parents in their capacity of the first applicant [Lena and Anna-Nina Angelini v Sweden, decision of 03.12.1986, Appl. No. 10491/83, DR 51/41 lodged against the alleged indoctrination of a child resulting in compulsory participation in a course on religious knowledge; C.J. J.J. E.J. v. Poland, decision of 16.01. 1996, Appl. No. 23380/94, DR 84/86 lodged against the alleged discrimination on the ground of religion resulted in the way religious instruction in public schools was organised in public schools]. On the other hand, in the case *Eriksson v. Sweden* [Judgment of 22 June 1989 Appl. No. 11373/85] the Court stated that the second sentence of Article 2 (P1-2) provides the right to the parents that minor children do not have. This pronouncement has been approved of by

the doctrine; it has been emphasised that the right to bring up one's children in conformity with one's convictions is conferred to the parents as persons closest to the child and acting in favour of their interests [11, p. 634 et seq.]. In other words parents are regarded as «natural depositaries» [8, p. 145] of their children's rights including the freedom of conscience and religion.

However, the parental rights to educate their children in accordance with their religious and philosophical convictions are not absolute; since the interpretation of the whole Article 2 (P1–2) is entirely determined by its first sentence, the parents' convictions cannot be incompatible with the fundamental right of the child to education [Campbell and Cosans v. the United Kingdom, judgment of 25.02.1982, Appl. No. 7511/76; 7743/76]. Besides, the rights of the parents are subject to limitations arising from the necessity to protect other interests of the child. On that ground the Commission dismissed an application filed by parents who alleging their religious beliefs objected to a Swedish law that made punishable the use of corporal punishment at home as being. Although some judges expressed doubts as to whether in cases of a light chastisement penal sanctions constitute an appropriate means, the Commission took the view that even if the upbringing of children remains in principle a duty of parents and their rights are embraced by the concept of «family life» pursuant to Article 8 ECHR, criminal law will inevitably cover some aspects of the relationships between children and parents as it is an ordinary means of control aimed at safeguarding the interests of the vulnerable members of the society [Seven Individuals v. Sweden].

5. Interpretation of the key concepts of Article 2 (P1–2)

The substantial scope of parental rights is determined by the interpretation of the terms «education» and «the duty to respect the religious and philosophical convictions of parents» adopted by the judicial organs of the Convention. To begin with, it should be borne in mind that the term «education» is broader in meaning than the term «teaching», since it is not limited to the process of training or transmission of a specific knowledge to the child but it also encompasses the inculcation of values [X. v. the United Kingdom, decision of 9.12.1980, Appl. No. 8844/80, DR 23/228]. Whereas «teaching» refers to objectified, scientifically verifiable truths, the term «education» is impregnated with axiological considerations that are only partially subject to rational assessment. In consequence, the scope of the duty to respect the convictions of parents in the area of teaching is much narrower than it is the case in the field of education where there is much space for discrepancies. Although the Convention does not enumerate any specific aims of education, as the Universal Declaration of Human Rights does, it is undisputable that the process of education should aim at facilitating the self-realization of the students and transmission of values inherent in a democratic society, such as pluralism, tolerance or respect for human dignity and human rights. What is more, the right to education has been framed in negative terms, which means that no positive obligations to guarantee a specific level of education have been imposed on the Contracting States.

As far as the term «convictions» is concerned, it is not synonymous with the term «opinions» or «ideas» employed in Article 10 ECHR. It is rather akin to the term

«belief» that appears in Article 9 ECHR. In consequence, in order to deserve protection under Article 2 (P1–2) the convictions of the parents have to attain «a certain degree of cogency, seriousness, cohesion and importance» [Campbell and Cosans v. the United Kingdom, op. cit., para. 36]. Furthermore, in order to qualify for protection under Article 2 (P1–2) the convictions of the parents have to meet some substantial standards. First of all they have to be compatible with human dignity and worthy of respect in a «democratic society». At the same time they must not conflict with the fundamental right of the child to education that covers all stages provided by the school system. This interpretation is substantiated above all by the French version of the Convention, where the term «convictions» appears both in Article 9 ECHR and in Article 2 (P1–2). The slight discrepancy between the wording of Article 9 ECHR and Article 2 (P1–2) in English version of the Convention is immaterial, given that the Court interprets both terms in an equal manner.

In this context an opinion has been expressed that the Court when deciding whether the parental convictions meet the requisites set out in Article 2 (P1–2), adopts a strict and somewhat ambiguous approach. Although it ruled that a view of the applicants on the use of corporal punishment at schools attains the required level of cogency, seriousness, cohesion and importance, in other case it rejected the argument that the failure to ensure education in a given language (the mother tongue of the applicants) violates the philosophical convictions of the parents [6, p. 558]. According to the Court, the adoption of an extensive interpretation of the term «philosophic convictions» that would include a right to be educated in a language preferred by one's parents would be tantamount to a departure from the ordinary meaning of the text of the provisions in question and thus would amount to an attempt of reading into the Convention a right that it does not stipulate. Indeed, it seems unconceivable why the desire of the parents that their children are taught in a language of the minority ethnic group is to be regarded as less serious or not as important as the disapproval of the use of corporal punishment in public schools.

The affinity of the terms «beliefs» and «convictions» means that the duty of the public authorities to respect the convictions of the parents in education and teaching does not cover every belief; it relates only to religious and philosophical convictions. By including the term «philosophical convictions» into the Article 2 (P1–2) the drafters of the Protocol No 1 expressed the intention to treat religious and secular beliefs on an equal footing. In other words, the term «philosophical convictions» has been attributed an autonomous meaning in relation to the term «religious convictions». The adjective «philosophical» is ambiguous, since on one hand it can refer to a fully developed, sophisticated thought system, on the other hand it could encompass views or opinions on matters of minor significance. The Court, however, took the view that in the context of Article 2 (P1–2) neither of these two extreme options are applicable; whereas the first option is elitist as its adoption would result in unduly exclusions, the second approach is inflationary as it would extend the scope of protection of Article 2 (P1–2) to trivial opinions. This means that an in-between interpretation of the term «philosophical convictions» is to be sought.

The attempt to establish this «in-between interpretation» of the term «philosophical convictions» is fraught with difficulty. In the *Belgian Linguistic Case* the Commission expressed the view that it is ample enough to include all sort of beliefs. Such interpretation, however, was regarded in the doctrine as too broad as it would result in an absurd assumption that antidarwinists could claim exemptions from biology classes, the pacifists could dispense themselves from history classes concerning wars and anarchists could seek exemption from classes in political science or courses in law [3, p. 1005]. Considering these difficulties that would arise from a too broad interpretation of the term «philosophical convictions» a view has been taken that, in order to deserve protection under Article 2 (P1–2) the beliefs of the parents should be inclusive enough to cover all or at least many aspects of the outlook on life and the view of the world. Such an interpretation is implied by the ordinary meaning of the term «philosophy»[6, p. 558].

This approach, however, has not been adopted by the Court. The paradigmatic judgment where the Court is satisfied, when a conviction in question relates only to one essential aspect of human life and conduct is the case *Campbell and Cosans v. the United Kingdom.* The applicants complained that the use of corporal punishment in Scottish schools conflicted with their convictions. The British government maintained in the first place that functions relating to the internal administration of a school, such as discipline, were of an ancillary character and therefore did not pertained to functions in relation to «education» and to «teaching», within the meaning of Article 2 (P1–2), these terms denoting the provision of facilities and the imparting of information, respectively. The Court pointed out that the education of children is a whole process whereby, in any society, adults endeavour to transmit their beliefs, culture and other values to the young, whereas teaching or instruction refers in particular to the transmission of knowledge and to intellectual development. It appears to the Court somewhat artificial to attempt to separate off matters relating to internal administration as if all such matters fell outside the scope of Article 2 (P1–2). The use of corporal punishment may, in a sense, be said to belong to the internal administration of a school, but at the same time it is, when inflicted, an integral part of the process whereby a school seeks to achieve the object for which it was established, including the development and moulding of the character and mental powers of its pupils. Moreover, the second sentence of Article 2 (P1–2) is binding upon the Contracting States in the exercise of «each and every» function that they undertake in the sphere of education and teaching, so that the fact that a given function may be considered to be ancillary is of no moment in this context [Valsamis v. Greece, para. 29]. Last, but not least, the applicants' objection to the infliction of corporal punishment relate to a weighty and substantial aspect of human life and behaviour, namely the integrity of the person.

When alleging the violation of the duty respect their convictions in the field of education, parents are supposed to prove that they hold them. As far as religious convictions are concerned it is relatively easy, since the adherence to a known religious community is deemed by the Court as a sufficient evidence. In contrast, it might be more difficult for an applicant to prove the fact that they hold some

philosophical convictions, especially if some less recognisable or individualistic beliefs are at stake. When alleging a violation of their rights under Article 2 (P1–2), parents have to prove that their convictions are part of a serious and coherent belief that underlies their claims , i.e. they have to show the casual relation between their beliefs and their disagreement with a measure taken by a state authority. Finally, they are supposed to prove that they have informed the school authorities on their convictions [9, p. 71].

6. The duty of the state authorities to respect the religious and philosophical convictions of the parents in teaching and education

First of all it should be borne in mind that the Contracting States have not assumed an obligation to guarantee a special kind or level of education. The role of the right to education is to preclude that anyone is excluded from the participation in the educational opportunities offered by a given state. Article 2 (P1–2) does not impose a duty on the State Parties to provide educational arrangements (e.g. to set up, run and support a particular type of schools) that cater for specific religious and philosophical convictions of the parents. It suffices if the State Parties respect the convictions of parents within the framework of existing and evolving educational system [14, p. 22].

The term «respect» implies a high degree of imperiousness. By making reference to the *travoux préparatoires* the Court noted that «Article 2 (P1–2) does not permit a distinction to be drawn between religious instruction and other subjects. It enjoins the State to respect parents' convictions, be they religious or philosophical, throughout the entire State education programme (…). That duty is broad in its extent as it applies not only to the content of education and the manner of its provision but also to the performance of all the «functions» assumed by the State. The verb «respect» means more than «acknowledge» or «take into account». In addition to a primarily negative undertaking, it implies some positive obligation on the part of the State» [Campbell and Cosans v. the United Kingdom, para. 37; Folgero and Others, v. Norway, para. 84c; Valsamis v. Greece, para. 27]. Above all the duty to respect the convictions of the parents means that the national authorities should recognise the option to enroll a child to a public or a private school in accordance with parents' preferences and possibilities. Although Article 2 (P1-2) does not provide an explicit right to set up private schools, the duty of the public authorities to respect parents' convictions in education unequivocally implies such a right [5, Art. 2 des 1. ZP, Rn. 1]. However, it should be borne in mind that the right to set up private schools does not mean that the national authorities are obliged to finance other forms of education outside the framework of public schools. The influence of that right on the prescriptive behaviour of the national authorities is limited to the requirement of equal treatment of all private educational establishments; if the authorities decide to subsidise private schools, they should do it without any discrimination whatsoever. Different treatment of a kind of schools has to be rationally justified on the basis of objective and verifiable criteria [10, p. 686].

The duty to respect parents' convictions refers in the first place to all types of schools, although private schools are obviously allowed to adopt a religious creed or ideology. In this case, the parental rights are actualised by the existence of a real

option to choose the type of a school they find appropriate for their children. Furthermore, the duties of state authorities cover all state activities undertaken within the ambit of education, although state regulations (and restrictions) with regard to public schools should primarily be aimed at ensuring an appropriate quality of education. The operation of public schools should be organised in such a way as not to frustrate the parents' right to rear their children in conformity with their convictions. In particular, The organisational responsibilities include the stage of setting and planning of the curriculum and the choice of the material to be taught. As far as the functioning of schools is concerned, the duty to respect parents' convictions is not reducible to activities related to teaching, but it extends to other spheres, such as the maintenance of order and discipline at school. Finally, the duty to respect parents' convictions affects the manner the national authorities are supposed to perform other tasks of a more general character pertaining to the organisation and financing of the school system [Kjeldsen, Busk Madsen and Pedersen v. Denmark, para. 50].

On the other hand, the character of the existing educational system and the manner it has been structured determines the scope of the obligations incumbent on public schools, since the existence of a well-developed network of private schools catering for different needs and subsidised by the state facilitates the enjoyment of parents' rights and fosters the protection of their convictions outside the public school system. The fact that in a given country an easily accessible system of private schools has been created justifies the broader latitude on the part of the public authorities in shaping the curriculum of public schools and the choice of the material to be taught, even if in some cases the enrollment of a child to a private school entails a certain degree of inconvenience or sacrifice on the part of the parents [Kjeldsen, Busk Madsen and Pedersen v. Denmark, para. 50]. Nonetheless, an extended network of private schools does not exonerate the state authorities form the duty to provide education in public schools in a pluralist way, even if private schools are heavily subsidised by the State, e.g. if the state funds 85 % of all expenditure connected with their establishment and running [Folgero and Others v. Norway, para. 101]. In the case *Kjeldsen, Busk Madsen and Pedersen v. Denmark* the government argued that the parents' convictions are sufficiently respected because the state has guaranteed the possibility to set up private schools, which are considerably subsidised by public funds. In consequence, the government may dispense itself from taking into consideration parents' convictions within the system of public schools. Both the Commission and the Court have rejected this argument by pointing out that the duty of public authorities refers to any action undertaken in the field of education, which applies to public and private schools. Furthermore, the duty to respect parents' convictions refers not only to the material imparted in the course of education and to the manner it is presented; state authorities have also to take into account parents' convictions, when taking appropriate measure with respect to the organization, financing and supervision. Finally, it relates to the issues of administrative character such as methods of discipline [2, p. 162].

The vast number of conflicts between parents and educational authorities relate to the substance of the teaching programmes. The Court confirmed the powers of

educational authorities as far as shaping the education programmes is concerned. However, the material should be presented in an objective and neutral way excluding any attempt of indoctrination on the part of the state. The emphasis is placed on the obligations of the states rather than on the rights of the parents who cannot demand that the material taught at schools be aligned to their beliefs. To confer an active role of parents by informing the contents of school programmes would render the operation of the education system impossible [X, Y and Z v. Germany, decision of 15.06.1982, Appl. No. 9411/81, DR 29/224; W. and D. and M. and H. v. the United Kingdom, decision of 06.03.1984, Appl. No 10228/82; 10229/82, DR 37/38]. Nonetheless, the prohibition of indoctrination does not preclude to oblige the children to attend classes in religious knowledge. In the case *Lena and Anna Nina Angelini v. Sweden* the applicant, an atheist, complained that the refusal to exempt her child from classes on religious knowledge amounted to indoctrination, since the child was forced to adopt the Christian way of thinking by compulsory attendance at classes in religious knowledge. (eventually, the second applicant was granted an exemption by Swedish education authorities). The Commission when dismissing the case, made a distinction between instruction in a specific religion and transmission of general information on religions. Even if the portrayal of religion in the primary school is focused on Christianity, it does not give rise to any indoctrination, as long as the material is imparted in an objective and neutral way.

Furthermore, it is obvious that some school subjects contain by their very nature material that is connected with the fundamental issues of religious or philosophical convictions. When ruling in the case *Kjeldsen, Busk Madsen and Pedersen v. Denmark*, in which the applicants sought to obtain an exemption from a course in sex education for their children (That is why the case is commonly called *the Danish Sex Education Case*), the Court noted that «the second sentence of Article 2 (P1–2) does not prevent States from imparting through teaching or education information or knowledge of a directly or indirectly religious or philosophical kind. It does not even permit parents to object to the integration of such teaching or education in the school curriculum, for otherwise all institutionalised teaching would run the risk of proving impracticable. In fact, it seems very difficult for many subjects taught at school not to have, to a greater or lesser extent, some philosophical complexion or implications. The same is true of religious affinities if one remembers the existence of religions forming a very broad dogmatic and moral entity which has or may have answers to every question of a philosophical, cosmological or moral nature»[Kjeldsen, Busk Madsen and Pedersen v. Denmark, para. 53]. This reasoning explains why the Court assumes that the obligation of the national authorities laid down in Article 2 (P1–2) refers not only to classes in a religion or religious science but also to the entire teaching programme [Kjeldsen, Busk Madsen and Pedersen v. Denmark, para. 51; Folgero and Others v. Norway, para. 84c]. In consequence, requirements as to form and substance of teaching binding the public authorities are applicable to all school subjects. These requirements include the following precepts [7, p. 245 et seq. The mentioned principles are derived from the judgments: Kjeldsen, Busk Madsen and Pedersen

v. Denmark, para. 53, Folgero and Others v. Norway, para. 84h, Hasan and Eylen Zengin v. Turky, judgment of 09.10.2007, App. No. 1448/04, para. 52]:

a. The State when fulfilling its functions with regard to education and teaching, must adopt appropriate measures to ensure that information or knowledge included in the curriculum is conveyed in an objective, critical and pluralistic manner. The State is forbidden to pursue an aim of indoctrination that might be considered as not respecting parents' religious and philosophical convictions. The prohibition on indoctrination plays the pivotal role in all state activities in the field of education by determining their limits. In the case *Cifti v. Turkey* [decision of 17.06. 2004, Appl. No. 71860/01] the Court took the view that the duty to complete the primary education imposed by the public authorities as a prerequisite for the admittance in the Quranic course cannot be regarded as an attempt of indoctrination on the part of the state or as an violation of the right of the child to receive religious education. On the contrary, such a requirement is to be perceived as a protective measure aimed at safeguarding that candidate for religious courses attain a certain degree of maturity which is indispensable in order to counteract potential attempts of indoctrination of minors.

b. Students have to be offered the possibility to adopt a critical approach towards religion.

c. The education process should take place in a quiet atmosphere, free from improper proselytism. Respect for parents' convictions is possible only «in the context of education capable of ensuring an open school environment which encourages inclusion rather than exclusion, regardless of the pupils' social background, religious beliefs or ethnic origins. Schools should not be the arena for missionary activities or preaching; they should be a meeting place for different religions and philosophical convictions, in which pupils can acquire knowledge about their respective thoughts and traditions» [Lautsi v. Italy, judgment of 03.11.2009, Appl. No. 30814/06, para. 47c].

The incompliance with the above-mentioned requirements in case of compulsory school subjects gives rise to the violation of Article 2 (P1–2). The infringement of parental rights is more likely to occur if in a given country there is no real alternative private education or if the option to send a child to a private school is not easily available to the parents. The question of whether the rights of parents have been violated is to be decided on the basis of objective criteria; the mere opinion of the involved is not sufficient [Valsamis v. Greece, para. 31; Kjeldsen, Busk Madsen and Pedersen v. Denmark, para. 53]. Article 2 (P1–2) does not prescribe that the parents' convictions have to be reflected in the school curriculum. Parents are not entitled to give a binding opinion of whether the curriculum corresponds with their religious or philosophical convictions. Full responsibility for setting and establishing the curricula falls within the competency of state authorities [10, p. 693].

7. Religious instruction at schools vs. the duty to respect parents' religious and philosophical convictions in education and teaching

There are some specific requirements stemming from Article 2 (P1–2) that apply to the teaching of subjects in public schools that are directly or exclusively oriented to imparting knowledge or information on a religion. As is known, there is no uniform

standard in Europe as to teaching of religion in public schools, that is why the national authorities are competent to decide on whether to provide religious instruction in public schools and, if so, what particular system of instruction should be adopted. When making decisions on that issue the public authorities enjoy a broad margin of appreciation. The only limit which must not be exceeded in this area is the prohibition of indoctrination [Grzelak v. Poland, judgment of 15.06.2010, App. No. 7710/02, para. 104]. Broadly speaking, within the state-members of the Council of Europe three models of regulation of the teaching of a religion in public schools can be distinguished:

1. Teaching of a religion takes place outside the school system. This solution has been adopted in countries that emphasise their laic character, especially in France. The Court has not delivered any judgment on the compatibility of that model with the standards established by the Convention so far, however the analysis of some cases, especially of the *Belgian Linguistic Case* and of the case *Kjeldsen, Busk, Madsen and Petersen v. Denmark*, shows that Article 2 (P1–2) cannot be interpreted in a way that it requires the inclusion of a course in a religion into school curriculum. The decisive argument that thesis is that the child's right to education does not include the right to be taught in accordance with religious and philosophical convictions of the parents [4, p. 346].
2. Teaching of a religion is arranged in a form of an interdenominational, integrated school subject designed to impart a general knowledge concerning different religions, philosophical systems and ethical problems. According to this model, educational authorities are responsible for preparing the teaching programme and its realisation. The attendance at the course is in principle obligatory, although partial exemptions are possible, when the material to be taught is of a strictly religious character or when a religious activity is undertaken (e.g. an act of worship or a visit to a church).
3. Religious instruction is organised in parallel to the teaching of secular subjects. Classes in a religion are targeted to students that belong to a particular church and take on a catechetic form. In consequence, the interested churches have a decisive influence on the material to be taught. The attendance at a course in religion is optional; in some variants of this system alternative classes in ethics are offered to children whose parents wish to opt out of religious instruction.

The model based on integrated teaching of a religion is not inconsistent with standards of the protection of human rights established by the Convention provided that minority groups are treated fairly and that the dominant position of the majority is not abused and that knowledge is to be imparted in a neutral, critical and pluralistic way [Folgaro and Others v. Norway, para. 84]. However, the creation of a detailed teaching programme and the organisation of teaching of such a course is not free from difficulties. In particular, the question arises as to what extent it is possible to adjust the teaching programme and organisation of an integrated course in religion to the social context of a school where one religion occupies a predominant position.

The most illustrative judgment that highlights the problems connected with the operation of the model of integrated teaching of a religion is the case *Folgero v. Norway*. The applicants challenged the introduction of the subject «Christianity, religion and philosophy» in Norwegian schools by arguing that the material of the course in question and the procedure of partial exemption do not meet the standards established by Article 9 ECHR and Article 2 (P1–2). The objective of the course declared by the legislator was to create an integrated and inclusive school environment without any regard to sex, religion or ethnic origin or social background of the children. Students holding different religious and philosophical views should get to know each other and obtain knowledge on their respective traditions. According to the authorities, the school should not be an arena of preaching and missionary activity [Folgaro and Others v. Norway, para. 16], however, this does not mean that teaching of the introduced subject was not considered to be neutral or to take place in religious or ethical vacuum. Taking into account the fabric of the Norwegian society the emphasis was supposed to be placed on teaching of Christianity[Folgaro and Others v. Norway, para. 17]. In addition, pursuant to relevant domestic law the attendance at the course was compulsory, although a partial exemption was available, when a particular lesson was meant to involve religious activities, such as saying prayers, singing chants, learning by heart religious texts or visiting a church. The exempted students had to acquire a general knowledge on the topics dealt with during the lessons they were excused from. For instance, they were supposed to become acquainted with the gist of religious texts, the basic equipment of a church or the general parts of a religious service [Folgaro and Others v. Norway, para. 48]. The curriculum of the subject in question was criticised by religious minorities and humanists for being dominated by information on Christianity, especially in its Lutheran version, which was deemed discriminatory. Moreover, the applicants complained about the lack of total exemption from the course and challenged the exemption procedure by claiming that they are supposed to explain in writing why the attendance at a particular class was at variance with their religious or philosophical. According to the applicants, the need to justify the petition for an exemption was tantamount to the requirement to disclose their convictions, which is incompatible with the negative right to freedom of religion protected under Article 9 ECHR. The Court conducted a three-level examination of these allegations:

The quantitative level. The Court expressed the view that taking in consideration the denominational fabric of a country and the place a religion occupies in the national history and tradition, the principle of pluralism is not violated if information on a majority religion constitutes a considerable part of the course. (In the discussed case the information on Christianity exceeded 50 % of the material). Such an arrangement cannot of its own be regarded as a departure from the principles of objectivity and pluralism resulting in indoctrination [Folgaro and Others v. Norway, op. cit., para. 89]. On the other hand, Article 2 (P1–2) does not prescribe that the dominant religion should be accorded a special treatment in the curriculum of an integrated course in ethics [Appel Irgang and Others v. Germany, decision of 06.10.2009, Appl. No. 45216/07].

The qualitative level. The inclusion of strictly religious activities into the course, such as saying prayers, singing religious songs or learning by heart religious texts, in connection with quantitative considerations, i.e. the structuring of the course in such a way that it is predominantly focused on Christianity, disturbed the required balance. However, these facts *per se* did not result in the violation of Article 2 (P1–2), which has occurred only after the examination of the procedural dimension.

The procedural level. Article 2 (P1–2) requires that in case of an integrated course in religious and philosophical science there is a possibility of exemption if the attendance at the course enters into conflict with religious or philosophical convictions of the parents. The procedure of granting an exemption should not be excessively complicated. In particular, a situation should be avoided where parents feel compelled to reveal their intimate beliefs, even if there is no explicit legal duty of such a disclosure. That is why the Court regarded the exemption procedure pursuant to which parents had to obtain an exemption from each class by explaining in writing why the participation of their children in it would violate their convictions as inconsistent with Article 2 (P1–2) [Folgero and Others v. Norway, para. 97–100]. Equally incompatible with the Convention are regulations that provide an exemption from the course only with regard to members of some religions while excluding other communities, especially those of a minority character [Hasan and Eylem Zengin v. Turkey, para. 76].

Instead of an integrated course in religious science there is a possibility to organise an obligatory course in ethics of a neutral and irreligious character. It would be wrong to assume that such a course *per se* is a form of a secular indoctrination. However, it should aim at passing on values common to all students, which means that no religion should be accorded a special rank in the curriculum of the course. Furthermore, taking into account the European context, the violation of the Convention would occur if the programme of a secular course in ethics promoted militant attitudes towards all religions, especially towards Christianity. These principles have been confirmed by the Court in the case *Appel-Irrgang and Others v. Germany*, in which the applicants complained against the compulsory introduction of a course in ethics in secondary schools in the Bundesland Berlin. The Court noted that the course in question is of a neutral character and the material it covers is varied as it contains information on different religions and philosophical systems. In consequence, the mandatory attendance at the course does not give rise to the breach of the Convention, since it does not guarantee a right not to be exposed to the manifestations of the opinions and convictions that conflict with the beliefs of the applicant.

As far as the model of a parallel teaching of a religion at public schools is concerned, it does not of its own give rise to the violation of Article 9 ECHR or Article 2 (P1–2) [Grzelak v. Poland, para. 104]. The systems of exemption connected with the offer of an alternative course in ethics satisfies the requirements of pluralism. This statement seems to be confirmed by the case *Angelini v. Sweden* in which the Court took the view that laws adopted in countries with a state church that provides the possibility of teaching in public schools only the religion of the established church does not violate the Convention. However, there is some doubt of whether this view

would be upheld nowadays, since such a solution can hardly be perceived as being reconcilable with the principle of pluralism [6, p. 564]. For the model of the parallel teaching the following principles are of the paramount importance: the prohibition of indoctrination, voluntary participation in a course in a given religion, nondiscrimination of the minority groups, equal treatment of all denominations and respect for privacy [7, p. 248 et seq.].

In the discussed model the requirement to preserve pluralism is met above all by the arrangement of alternative courses and by the procedure of exemption. However, a special care should be taken to avoid the pressure that could be put on children and parents who desire not to attend classes in religion. As far as the prohibition of indoctrination is concerned, its impact is limited to the prohibition of an improper proselytism that may take the form of brainwashing. This applies in particular to younger pupils that are especially vulnerable and susceptible to influences. In contrast, the prohibition of indoctrination and objectivity to the full extent applies to classes in ethics.

The requirement of a voluntary participation is satisfied when parents and/or students are free to decide whether to attend a course in religion of a given church or to opt for a course in ethics. Therefore, where applicable and viable, effective measures have to be taken to organise courses in religion or/and ethics for minority groups. Particularly at this point emerge many problems, which can be illustrated by decisions of the Court related to the legal solutions concerning the teaching of a religion in public schools in Poland. Although the relevant domestic law provides for students who do not attend classes in religion a possibility to opt for classes in ethics, in practice few schools offer such classes, which means that this option remains a dead letter. Besides, it is to be noted that under Polish law the choice between a course in religion or classes in ethics does not take a form of a compulsory alternative. This means that parents are allowed to opt for classes in religion, in ethics or they may as well withdraw their children from both of them.

Apart from the insufficient availability of alternative courses in minority religions or in ethics another problem inherent in the functioning of the parallel teaching model is that it requires at least a partial disclosure of religious beliefs of parents and their children vis-à-vis the school authorities when making a declaration concerning the choice of the course. However, according to the Commission, the requirement to make such a declaration does not amount of its own to any violation of the Convention. When justifying their position, the Commission put forward a rather farfetched argument that even if a declaration of a preference is inherent in the act of choice between a course in religion or in ethics, it does not necessarily entail the disclosure of religious beliefs or of the adherence to a religious group [C.J.J.J. and E.J. v. Poland]. It is difficult to agree with the Commission on this point, in particular when this argument is perceived from the perspective of a religiously homogenous country. On the other hand it cannot be ignored that the jurisprudence of the Strasbourg organs on negative freedom of religion seems to undergo evolution. Whereas in the case *Saniewski v. Poland* [decision of 28.06.2001, Appl. No. 40319/98] the Commission regarded the question of whether the freedom of religion includes the right not to

disclose one's beliefs as open, in the case *Grzelak v. Poland* [para. 87] and *Hasan and Eylem Zengin v Turkey* [para. 97] the Court explicitly confirmed that the freedom to manifest one's religious beliefs comprises also a negative aspect, i.e. the right not to be required to reveal one's faith or religious beliefs and not to be compelled to assume a stance from which it may be inferred whether or not one holds such beliefs.

Finally, the model of a parallel teaching does not rule out the possibility that marks for the course in religion or ethics are included on school certificates. Such a practice, however, should not result in any discrimination. It is consistent with Article 14 in conjunction with Article 9 ECHR as long as the mark constitutes a neutral information on the fact that a pupil followed one of the optional courses offered by a school. Furthermore, a regulation of this kind must also respect the right of pupils not to be compelled, even indirectly, to reveal their religious beliefs or lack of them [Grzelak v. Poland, para. 92]. In other words, there is no breach of the Convention when in the space «religion/ethics» on school certificate a mark appears. However, an issue under the Convention may arise in a situation, when in the rubric «religion/ethics» a straight line is left, because the school authorities have failed to offer a course in a religion or ethics that is compatible with the convictions of some parents and in consequence the student involved could not attend one of such courses he or she desired to participate. In such a case the school certificate conveys a message that the student has not attended a course in religion and on the same time a course in ethics has not been offered by the school. In no account can such information be viewed as neutral, on the contrary it may amount to «unwarranted stigmatising» [Grzelak v. Poland, para. 99] of the student. In Poland, where Roman Catholic Church occupies a dominant position, students who do not attend the course in religious instruction are automatically categorised as non-Catholics. That is why the absence of a mark in religion or ethics falls within the scope of the negative aspect of the right to freedom of religion, since it may be read as the lack of religious adherence.

Additional problems may arise when the mark for religious education or ethics is taken into account in calculation of «the average mark», since some students who do not attend such courses are not given the opportunity to improve their average mark. Such students would either find it more difficult to increase their average mark as they could not follow the desired optional subject or might feel under pressure – against their conscience – to attend a religion class in order to improve their average mark [Grzelak v. Poland, op. cit., para. 96]. The Court has not indicated a way of how to sort out the discussed problems, otherwise it would impugn on the margin of appreciation of the Contracting States. Nonetheless, it mentioned that whenever the national authorities make a decision to include the mark in religion or ethics on the school certificate and to treat that mark on an equal footing with the other ones, they should take positive measures to ensure that each student – regardless of their convictions – is given the opportunity to obtain such a grade. Secondly, the school certificate should not convey information on beliefs held by parents and children, even if it would occur in an indirect manner. In the discussed case the Court ruled that Poland exceeded the margin of appreciation, since the interference in the freedom of religion was disproportionate. When reaching this conclusion, the Court took into

consideration that the parents repeatedly demanded that the educational authorities provide classes in ethics. Furthermore, it emphasised the fact that the overwhelming majority of Poles are Catholic, which gives rise to possible pressure put on minority students to attend lessons in religion. Finally, the Court noted that the absence of the mark in religion or ethics on the school report may cause a stigmatising effect on the student concerned.

8. Concluding remarks

When interpreting Article 2 (P1–2) the Court takes into account that in Europe there are no common standards as far the structure and form of education is concerned. On the other hand, there is no European common ground as to the place and role of religion in public space. This accounts for awarding of the wide margin of appreciation to the national authorities with respect to setting the system of education, establishing the programmes and curricula of education and teaching within public schools. Teaching and education have to reflect the cultural and religious variety throughout Europe. However, when fulfilling their tasks, the public authorities have to actualise some common standards and indispensable in the democratic society. They include above all the necessity to support tolerance and pluralism in education. Furthermore, they are obliged to effectively guarantee the child's right to receive education, which implies that the teaching programme cannot be free form contents directly or indirectly related to religion and philosophy. On the other hand, information and knowledge passed on to students has to be imparted in an objective and neutral way.

When taking appropriate measures in the field of education, the public authorities have to respect religious and philosophical convictions of the parents, however the right of the parents is not of an absolute character. It is subject to multiple limitations in case it enters into conflict with an interest of the child, in particular when it collides with child's right to receive education. The public authorities have to create a balance by properly weighing out the conflicting interests of the parents, children and the society. When attempting to strike that balance, they enjoy a considerable margin of appreciation.

Bibliography

1. Blum N., Die Gedanken-, Gewissens- und Religionsfreiheit nach Art. 9 der Europäischen Menschenrechtskonvention / Blum N. – Berlin 1990.

2. Bueren Van G., The International Law on the Rights of the Child / Bueren Van G. – Boston, London, 1995.

3. Dupuy P. M., Boisson de Charzounes L., Art. 2 I Protocol, in: L. E. Pettiti, La Convention européenne de droits de l'homme. Commentaire article par article, Paris 1998.

4. Evans M. Religious Liberty and International Law in Europe / Evans M. – Cambridge, 1997.

5. Frowein J. A. Europäische Menschenrechtskonvention / Frowein J. A., Peukert W. – EMRK Kommentar, Kehl am Rhein, Straßburg, Arington, 1998.

6. Garlicki L., Protokół nr 1 do konwencji o ochronie praw człowieka i podstawowych wolności, sporządzony w Paryżu 20.03.1952, [in:] L Garlicki, Konwencja o Ochronie Praw Człowieka i Podstawowych Wolności. – Tom II. – Warszawa, 2011.

7. Garlicki L. Religia a szkoła publiczna (na tle aktualnego orzecznictwa strasburskiego), [in:] P. Borecki, A. Czohora, T. J. Zieliński, Pro bono Reipublicae. Księga Jubileuszowa Profesora Michała Pietrzaka. – Warszawa, 2009.

8. Grześkowiak A. Religia w szkole a prawa człowieka, [in:] J. Krukowski, Nauczanie religii w szkole w państwie demokratycznym. – Lublin, 1991.

9. Kilkelly U. The Child and the European Convention on Human Rights, Brookfield USA, Singapore. / Kilkelly U. – Sydney, 1999.

10. Nowicki M. A. Wokół Konwencji Europejskiej. Komentarz do Europejskiej Konwencji Praw Człowieka / Nowicki M. A. – Warszawa, 2010.

11. Velu J., Ergec R., La Convention Européenne des Droits de l´Homme / Velu J., Ergec R. – Bruxelles, 1990.

12. Warchałowski K. Prawo do wolności myśli, sumienia i religii w Europejskiej Konwencji Praw Człowieka i Podstawowych Wolności / Warchałowski K. – Lublin, 2004.

13. Wildhaber L. Right to Education and Parental Rights, in: R. St. J. MacDonald, F. Matscher, H. Petzold, European System for the Protection of Human Rights. / Wildhaber L. – Dordrecht, 1993.

14. Wolfram K. Internationaler Kommentar zur Europäischen Menschenrechtskonvention. / Wolfram K, – Köln, Berlin, Bonn, München, 2002.

15. Wiśniewski A. Koncepcja marginesu oceny w orzecznictwie Europejskiego Trybunału Praw Człowieka / Wiśniewski A. – Gdańsk, 2008.

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ПРАВО БАТЬКІВ НА ВИХОВАННЯ ДІТЕЙ ЗГІДНО З ВЛАСНИМИ РЕЛІГІЙНИМИ І ФІЛОСОФСЬКИМИ ПЕРЕКОНАННЯМИ ТА АКТИВНІСТЬ ДЕРЖАВИ У СФЕРІ ОСВІТИ У СВІТЛІ СТАНДАРТІВ ЄВРОПЕЙСЬКОЇ КОНВЕНЦІЇ ПРАВ ЛЮДИНИ

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Проаналізовано обов'язок публічної влади дотримуватися у сфері освіти прав батьків на виховання дітей згідно з їхніми релігійними та філософськими переконаннями. Особливу увагу присвячено проблемі конфлікту інтересів між державою, яка відповідає за забезпечення правильного функціонування системи освіти, метою якого є не тільки передача об'єктивних знань, але також прищеплення дітям та молоді цінностей, що є основою демократичного суспільства, та батьками, які бажають, щоб їхні діти отримали освіту і виховання, що у найбільш можливому ступені відповідає їхнім релігійним та філософським переконанням.

Ключові слова: освіта, виховання дітей, релігійні та філософські переконання батьків.

ПРАВО РОДИТЕЛЕЙ НА ВОСПИТАНИЕ ДЕТЕЙ В СООТВЕТСВИИ С СОБСТЕННЫМИ РЕЛИГИОЗНЫМИ И ФИЛОСОФСКИМИ УБЕЖДЕНИЯМИ И АКТИВНОСТЬ ГОСУДАРСТВА В СФЕРЕ ОБРАЗОВАНИЯ В СВЕТЕ СТАНДАРТОВ ЕВРОПЕЙСКОЙ КОНВЕНЦИИ ПРАВ ЧЕЛОВЕКА

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Проанализировано обязанность публичной власти соблюдать в сфере образования права родителей на воспитание детей согласно с их религиозными и философскими убеждениями. Особое внимание уделяется проблеме конфликта интересов между государством, отвечающим за обеспечение правильного функционирования системы образования, целью которого является не только передача объективных знаний, но также и воспитание детей и молодежи в духе ценностей, являющихся основой демократического общества, и родителями, желающими, чтобы их дети получали образование и воспитание, в наибольшей степени отвечающие их религиозным и философским убеждениям.

Ключевые слова: образование, воспитание детей, религиозные и философские убеждения родителей.