

ISSUES ON THE RIGHT TO RELIGIOUS EDUCATION

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Abstract: *The article analyses international legal framework, preconditions of realization of the right to religious education in Lithuania and other European Union (EU) states during compulsory education, discusses certain issues related to ensuring and implementing the right of religious education in Lithuania and other European Union (EU) states. Right to religious education arises from the coherent fundamental rights, such as freedom of religion, conscience and thought, right to choose or change beliefs, right to educate one's children according to one's convictions, right and duty to study until certain age, freedom to choose religious studies for one's children. Due to the processes of globalization society becomes increasingly culturally heterogeneous, therefore, states carry a complex task to equally ensure different individual interests related to religious education. Majority of EU states are required to ensure education of children according religious convictions of their parents and needs of the children themselves.*

Keywords: *human rights, right to education, right to freedom of religion, right to religious education*

INTRODUCTION

It is universally accepted that within European community everyone has a right to freedom of thought, religion, and conscience, which means, that "... 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".¹ The Universal Declaration of Human Rights states the same.² These rights are embedded in the constitutions of many democratic states and are recognized as constitutional rights. Making of these rights constitutionally protected, raises certain issues as well as obligations to the states that recognize them while ensuring those rights, considering the current processes related to globalization.

Globalization processes determine that societies within democratic states become more and more diversified which, in time, increases a need to replace a homogeneous religious teaching with a more diversified teaching of religion in educational institutions. Scientists are devoting considerable attention to the issue of freedom of religion, however, the research has been mainly restricted to research of the scope of the freedom of religion³ or analysis of the status of traditional religion within a

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¹ European Convention on Human Rights, Art. 9; http://www.echr.coe.int/NR/rdonlyres/D5CC24A7-DC13-4318-B457-5C9014916D7A/0/ENG_CONV.pdf.

² Universal declaration of Human rights, Article 18 : "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 teaching, practice, worship and observance", <http://www.un.org/en/documents/udhr>.

³ VITKAUSKAITĖ-MEURICE, D. The Scope and Limits of the Freedom of Religion in International Human Rights Law. *Jurisprudence*. 2011, 18(3), p. 841–857; VIDRINSKAITĖ, S. Tikėjimo ir sąžinės laisvė: konstituciniai pagrindai ir realizavimo ribos Lietuvos Respublikoje. *Jurisprudence*. 2006 12(90), p. 88–98.

state⁴, and there has been insufficient attention devoted to the issue of religious teaching in the literature. Education of individuals is very relevant in educational policies of both European Union and Lithuania because time progress and advance depend on human abilities and their application. Alternation of the content of education is becoming a continuous process which is influenced by political, economical, social, cultural phenomena on a global, European Union and national level, when competence becomes a priority in education. It is no longer sufficient to provide skills of literacy, communication, critical and problem thinking by teaching how to use full range of modern technologies. Democratic society has to foster common human and religious virtues and norms that allow better comprehending, interacting and coexisting in a modern day World.⁵ Therefore, challenges arise of how to properly formalize and later implement the religious teaching in the process of education.

The object of the article is the international legal framework and systems of legal regulation of the right to religious education in Lithuania and other European Union states during compulsory education.

THE RIGHT TO RELIGION AND RELIGIOUS EDUCATION

The essence of the freedom of thought, religion and conscience and their relation to religious education is discussed in this chapter, through systematic analysis of international legal framework related to the right of freedom of religion, as well as by providing a compact comparative analysis on an EU level. Such analysis shows that implementation of such a right brings about important requirements for the states themselves. It also raises some important issues related to ensuring of right to freedom of religion in the context of religious education.

(A) INTERNATIONAL LEGAL ANALYSIS WITHIN THE FRAMEWORK OF INTERNATIONAL LAW

Right of freedom of religion, thought and conscience are so called civil and political rights, which are referred to as the first generation human rights. These rights usually are named as fundamental rights, because they are related to the very fundamental values of a human being (the right to life, as well as spiritual life, the right to dignity, the right to freedom and equality, the right to immunity, etc.)⁶. Freedom of religion or belief, conscience and thought is acknowledged as an individual right to be protected in one's spiritual and transcendental relationships, moral attitudes and intellectual activity.

⁴ BALODIS, R. Equality Principle and Status of Predominant Religion (Traditional Religious Denomination) in the Baltic States. *Jurisprudence*. 2006 12(90); p. 103–107; STANISZ, P. The principles of the relationship between Church and State in the Constitution of the Republic of Poland of 2nd April, 1997. *SOTER*. 2007.22(50), p. 131–143; GLODENIS, D. Bažnyčios ir valstybės santykių raiška ir ypatumai: racionalių pasirinkimo priegios požiūris, Kultūra ir visuomenė. *Socialinių tyrimų žurnalas*. 2011 2 (3), p. 83–100; LANKAUSKAS, M. Valstybės ir bažnyčios atskyrimo principas: lyginamieji aspektai ir teisinė padėtis Lietuvoje. *Teisės problemos*. 2009. Nr. 1 (63), p. 88–119.

⁵ RUGEVIČIŪTĖ, G., R. Tikybos pamokų pasirinkimo motyvai ir bendroji katalikų tikybos mokymo programa. *SOTER*. 2006.17(45), p. 69.

⁶ BIRMONTIENĖ, T., JARAŠIŪNAS, E. et al. *Konstitucinė teisė*. Vilnius, 2002.

The use of the term “religion” also supports the right to non-religious beliefs in human rights discourse. Office of the General Commissioner for Human Rights of the United Nations issued General comment No.: 22 for some provisions of Universal Declaration of Human Rights: “Article 18 protects theistic, non-theistic and atheistic beliefs, as well as the right not to profess any religion or belief. The terms “belief” and “religion” are to be broadly construed. Article 18 is not limited in its application to traditional religions or to religions and beliefs with institutional characteristics or practices analogous to those of traditional religions. The Committee therefore views with concern any tendency to discriminate against any religion or belief for any reason, including the fact that they are newly established, or represent religious minorities that may be the subject of hostility on the part of a predominant religious community”⁷.

The state has a right to limit the manifestation of a religion or belief if recognized by law, and only in such extent as is necessary to protect public safety, order, health, morals and the fundamental rights and freedoms of others.⁸ The freedom of religion is non-distinguishable from such rights as the right to have one’s own beliefs and express them freely, freedom to acquire, receive and spread information and ideas, freedom of assembly and association, right of parents to educate their children according to their beliefs, and, consequently, the right to education. It should also be pointed out that “the freedom of religion or belief provides human beings with the possibility of having or adopting a religion or belief of their choice, and the freedom — either individually or in community with others and in public or private — to manifest one’s religion or belief in worship, observance, practice and teaching. This includes the right to erect and visit places of worship, to impart religious teachings and participate in religious education, to profess one’s faith in public, and to create and publish religious writings”⁹.

There are religious rights at stake, which implicate rights and duties discussed herewith, for example, the right of parents or legal guardians to bring the child up based on their religion or belief; the right of the child to religious education in accordance with the will of parents, and the right not to be compelled to receive education against their wishes; right of the child to protection from discrimination and to education for tolerance; right of the child’s will when not under the care of parents or legal guardians; right of the State to limit practices injurious to child’s development or health¹⁰.

The 1989 United Nations Convention on Children’s Rights is one of the most important legal documents, which establishes creation of the rights of children *per se*. However, even though the aspect of “spiritual development has played a major role in the struggle for children’s rights ever since the ground-breaking Geneva Declaration of the 1920s, the 1989 declaration does not include a clear reference to children’s right to religion or spiritual-

⁷ UN General Commissioner for human rights; General Comment No. 22; The right to freedom of thought, conscience and religion (Art. 18): 1993.07.30. CCPR/C/21/Rev.1/Add.4, General Comment No. 22. (General Comments) <http://www.unhchr.ch/tbs/doc.nsf/0/9a30112c27d1167cc12563ed004d8f15>.

⁸ JOVAIŠAS, K. (ed.). *Lietuvos Respublikos Konstitucijos komentaras*. Vilnius, 2000, p. 204.

⁹ VITKAUSKAITĖ-MEURICE, D. The Scope and Limits of the Freedom of Religion in international Human Rights Law. *Jurisprudence*. 2011, 18(3), p. 846.

¹⁰ Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief; Article 5, <http://www2.ohchr.org/english/law/religion.htm>.

ity”¹¹. There is a number of international documents that embed the right to religion in its various aspects, such as, for example, United Nations Charter of 1945, Universal Declaration of Human rights of 1948, Convention on the Prevention and Punishment of the Crime of Genocide (1948), Convention Relating to the Status of Refugees (1951), Convention relating to the Status of Stateless Persons (1954), etc. It is, therefore, necessary to analyze the legal provisions both on international and national level (the latter is discussed in the third part of this article) in order to determine, whether the right to religion of children is recognized to its full extent.

United Nations have adopted a number of legal instruments that are related or embed provisions regarding the right to religion. Article 1.3 of the Charter of the United Nations of 1945 promotes and encourages “respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion”¹². Article 13.1 further provides that the General Assembly promotes “international co-operation in the economic, social, cultural, educational, and health fields, ... for all without distinction as to race, sex, language, or religion”¹³. As well as, within the context of cooperation on social and economic field, the General Assembly embeds “universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion”¹⁴ within the content of Article 55 of the United Nation Charter.

Article 18 of the Universal Declaration of Human Rights of 1948 is the main legal provision granting the right of freedom of thought, conscience and religion to everyone, which 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 teaching, practice, worship and observance”¹⁵. Article 26 of the same Declaration refers to education in the aspect that it shall “promote understanding, tolerance and friendship among nations, racial or religious groups”¹⁶.

Article 2 of the United Nations Convention of 1948 on the Prevention and Punishment of the Crime of Genocide defines genocide as any act “with the intent to destroy, in whole or in part, a national, ethnical, racial or religious group”¹⁷. Article 4 of the United Nations Convention of 1951 in Reference to the Status of Refugees, refers to refugees being accorded the same rights as nationals “with respect to freedom to practice their religion and freedom as regards the religious education of their children”¹⁸. Article 3 and 4 of the United Nations Convention relating to the Status of Stateless Persons of 1954 contains the same language, with respect to religion or belief, as found in the Charter of the United Nations and the Convention on the Status of Refugees.

¹¹ SCHWEITZER, F. Children's right to religion and spirituality: legal, educational and practical perspectives. *British Journal of Religious Education*. Vol. 27, No. 2, March 2005, pp. 103–113.

¹² Charter of the United Nations, Article 1.3, <http://www.un.org/en/documents/charter/index.shtml>.

¹³ Charter of the United Nations, Article 31.1, <http://www.un.org/en/documents/charter/index.shtml>.

¹⁴ Charter of the United Nations, Article 55, <http://www.un.org/en/documents/charter/index.shtml>.

¹⁵ Universal Declaration of Human Rights, Article 18, <http://www.un.org/en/documents/udhr/index.shtml#atop>.

¹⁶ Universal Declaration of Human Rights, Article 26, <http://www.un.org/en/documents/udhr/index.shtml#atop>.

¹⁷ Convention on the Prevention and Punishment of the Crime of Genocide, Article 2, http://en.wikisource.org/wiki/Convention_on_the_Prevention_and_Punishment_of_the_Crime_of_Genocide.

¹⁸ Convention in Reference to the Status of Refugees, Article 4, <http://www.unhcr.org/3b66c2aa10.html>.

Articles 1, 2 and 5 of the United Nations Convention against Discrimination in Education of 1960 state that the establishment or maintenance of separate educational institutions for religious reasons is not discriminatory, if it is in keeping with the wishes of parents or legal guardians, and providing that these institutions conform to educational standards developed by competent authorities, and are directed to the full development of the human personality and to strengthening respect for human rights and fundamental freedoms¹⁹.

Article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination of 1965 declares that full compliance with the latter Convention includes the right to freedom of religion or belief for all racial and ethnic groups, along with other fundamental rights and freedoms²⁰. Articles 18 and 26 of International Covenant on Civil and Political Rights of 1966 guarantee everyone the right to education for the full development of human personality and respect for human rights by promoting understanding, tolerance and friendship among nations, racial and religious groups²¹. Article 13 of the International Covenant on Economic, Social and Cultural Rights of 1966 ensures the religious and moral education of children in conformity with the wishes of parents or legal guardians, and uses the phrase “full development of human personality and respect for human rights” found in other human rights instruments²².

Article 16 of the Convention on the Elimination of All Forms of Discrimination Against Women of 1979 deals with women’s rights in the context of family relations. Several Muslim states have reservations regarding this Article due to perceived conflicts with national laws and Shari’a law. The Committee on the Elimination of Discrimination Against Women (CEDAW) has refuted reservations to Article 16 by providing recommendations in regard of conflicts between obligations to the Convention and traditional religious or cultural practices. The Committee calls on States to eradicate such religious based practices as forced marriage, dowry deaths, and female circumcision²³.

Among the general notions compiled in the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief of 1981, Article 5 of the latter declaration elaborates on the right of religion in regard to children. Sub-article 1 or Article 5 protects the right of parents or legal guardians to privately organize the life within the family “in accordance with their religion or belief and bearing in mind the moral education in which they believe the child should be brought up”. Sub-article 2 protects the right of children to have access to education “in the matter of religion or belief in accordance with the wishes of his parents or, as the case may be, legal guardians”, it also ensures that children shall “not be compelled to receive teaching on religion or belief against the wishes of his parents or legal guardians”. In case, if a child is not under care of parents or

¹⁹ Convention against Discrimination in Education. http://www.unesco.org/education/information/nfsunesco/pdf/DISCRIM_E.PDF

²⁰ International Convention on the Elimination of All Forms of Racial Discrimination. <http://www2.ohchr.org/english/law/cerd.htm>.

²¹ International Covenant on Civil and Political Rights, <http://www2.ohchr.org/english/law/ccpr.htm>.

²² International Covenant on Economic, Social and Cultural Rights, <http://www2.ohchr.org/english/law/cesr.htm>.

²³ <http://www.un.org/womenwatch/daw/cedaw/cedaw.htm>.

guardians, sub-article 4 elaborates that under the principle of the best interest of the child “due account shall be taken of their [that of children] expressed wishes or of any other proof of their wishes in the matter of religion or belief”. Sub-article 3 of the same article embeds a general principle of non-discrimination of the child “on the ground of religion or belief” as well as sub-article 5 states that upbringing of the child according to religious beliefs shall “not be injurious to his physical or mental health or to his full development”. When analyzing the content of the right of religious education Article 6 of the present Declaration states that “the right to freedom of thought, conscience, religion or belief shall include, inter alia,” the right “to teach a religion or belief in places suitable for these purposes”²⁴.

Finally, the United Nations Convention on the Rights of the Child of 1989 identifies the rights of the child to freedom of religion or belief. It differs, though, from article 5 of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief in regard that it respects the rights and duties of parents or legal guardians, but places an emphasis on providing direction in a manner consistent with the “evolving” capacity of the child, and calls on states to limit practices of religions or beliefs that may be injurious to the child, as elaborated in Article 18, paragraph 3 of the Covenant on Civil and Political Rights. A child is defined as anyone below the age of 18 years²⁵.

The Convention on the Right of the Child embeds provisions related to the right of the child to be brought-up and educated without infringement of his or her religious orientation. It also protects the right of the parents to take part in the upbringing and education of their children according to their religious convictions. Under the Convention “States Parties shall respect the right of the child to freedom of thought, conscience and religion”,²⁶ no child shall be discriminated in any way “irrespective of the child’s or his or her parent’s or legal guardian’s race, color, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status”²⁷. State Parties to the Convention carry an obligation to ensure by appropriate measures “that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child’s parents, legal guardians, or family members”.²⁸

The Convention also emphasizes the right of the child to be brought up in surroundings resembling religious convictions: “due regard shall be paid to the desirability of continuity in a child’s upbringing and to the child’s ethnic, religious, cultural and linguistic background.”²⁹ Under the Convention the States Parties are obliged to ensure that the education of the child shall be directed to: “the preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance ... in ethnic, national and religious groups and persons of indigenous origin.”³⁰

²⁴ <http://www2.ohchr.org/english/law/religion.htm>.

²⁵ <http://www2.ohchr.org/english/law/crc.htm>.

²⁶ Convention on the Rights of the Child, Article 14.1, <http://www2.ohchr.org/english/law/crc.htm>.

²⁷ Convention on the Rights of the Child, Article 2.1, <http://www2.ohchr.org/english/law/crc.htm>.

²⁸ Convention on the Rights of the Child, Article 2.2, <http://www2.ohchr.org/english/law/crc.htm>.

²⁹ Convention on the Rights of the Child, Article 20.3, <http://www2.ohchr.org/english/law/crc.htm>.

³⁰ Convention on the Rights of the Child, Article 29.1(d), <http://www2.ohchr.org/english/law/crc.htm>.

Some scholars³¹ argue, that despite the generally optimistic interpretations, the Convention does not include a clear or sufficient reference to the children's right to religious or spiritual education, and that the Convention is "lacking" in respect that "religious education is a private matter, most of all a parental concern and only indirectly ... for the educational institutions maintained by the state".³² It is pointed out that "the context in which spiritual rights are placed is about standard of living".³³ In respect to status of the parents (guardians) of the child "State Parties are to respect the responsibilities, rights and duties of parents ... to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance".³⁴ The latter Article also provides that the "primary responsibility" of the parents is "to secure... the conditions of living necessary for the child's development", in particular in regard to nutrition, clothing and housing.³⁵ Article 28 of the Convention is related to education solely, however, it does not in any way relate to religion or spirituality.

(B) REGIONAL COMPARATIVE ANALYSIS ON EUROPEAN UNION LEVEL

There are common principles of respect for religious freedom and right to religion which are embedded on international level. However, there are different positions towards the right to religious education in the member states of European Union: some member states' constitutions establish a state church or state religion, or provide for a special relationship with one or few religions, some member states cherish states' neutrality in religious matters. For example, the Constitution of Denmark, Article 4 states that "The Evangelical Lutheran Church shall be the Established Church of Denmark, and, as such, it shall be supported by the State"³⁶. In Denmark there exists the "freedom of school" (Art. 76 of the Constitution), which guarantees the parents the free choice of how to educate their children. The parents are given very liberal choices and can even decide to educate their children at home.

The main religious organization in Denmark is the Folk Church. Although there are no private schools founded by the Folk Church, other religious groups have decided to found such private schools. However, cooperation with groups, for example, trying to influence the pupils by indoctrination is forbidden³⁷.

There are more countries in the European Union of the same type, which can be distinguished by the existence of a State Church or a predominant religion: in England - the Church of England is the official state church of England, in Greece – "the prevailing religion in Greece is that of the Eastern Orthodox Church of Christ"³⁸, in Malta – "the religion of Malta is the Roman Catholic Apostolic Religion"³⁹. The Constitution of Malta also pro-

³¹ Friedrich Schweitzer – Professor of Religious Education, Tübingen University.

³² SCHWEITZER, F. Children's right to religion and spirituality: legal, educational and practical perspectives. *British Journal of Religious Education*. Vol. 27, No. 2, March 2005, p. 104.

³³ *Ibid.*, p. 104.

³⁴ Convention on the Rights of the Child, Article 27.2, <http://www2.ohchr.org/english/law/crc.htm>.

³⁵ Convention on the Rights of the Child, Article 27.2, <http://www2.ohchr.org/english/law/crc.htm>.

³⁶ The Constitution of Denmark, http://www.servat.unibe.ch/icl/da00000_.html.

³⁷ <http://www.euresisnet.eu/Pages/ReligionAndState/DENMARK.aspx>.

³⁸ The Constitution of Greece, Article 3, <http://www.hri.org/docs/syntagma/artcl25.html#A3>.

³⁹ The Constitution of Malta, Article 2.1. <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8566&l=1>.

vides that “the authorities of the Roman Catholic Apostolic Church have the duty and the right to teach which principles are right and which are wrong. Religious teaching of the Roman Catholic Apostolic Faith shall be provided in all State schools as part of compulsory education”⁴⁰.

There are countries in European Union, which guarantee freedom of religion and do not have an official religion, but provide for a special relationship with few religious. For example, in Belgium, there are four articles in the Constitution which guarantee the freedom of religion (Article 19, 20, 21, 181)⁴¹. Article 19 allows the freedom of worship as well as free and public practice. Article 20 guarantees not to be obliged to contribute in any way to the acts and ceremonies of a religion or to respect the days of rest. The first paragraph of Article 21 points out the independence of the religious groups and is interpreted as the right to an internal ecclesiastical organisation. In Belgium six religions are currently officially recognised by the State: Catholicism, Protestantism, Judaism, Anglicanism, Islam and the (Greek and Russian) Orthodox Church.

Different situation is in France: due to the principle of “French laïcité”⁴² there exists no relation between State and religion. However, freedom of the exercise of religion is guaranteed by the Declaration of the Rights of Man and of the Citizen of 1789, which is considered as the part of the Constitution of 1946⁴³. Despite strict separation of State and Church, there is a possibility to get religious education in state schools. The French Ministry of National Education decided that “the arrangements for religious education in State schools in France are as follows: in secondary schools priests (who are not paid by state) can give religious instruction outside school hours either in the school or out of it. In the latter case Thursdays, a whole holiday, can be used for the purpose. In elementary schools religious instruction can be given outside the school on Thursdays”⁴⁴.

Therefore, religious freedom is recognised in all Member States and religious instruction could be provided in the state schools. Few different models are distinguishable: 1) compulsory confessional one particular religion with opt-out; 2) compulsory religious education of different religions with the possibility to opt out or to attend alternative classes (ethics), 3) voluntary religious education, offered at request of parents or pupils.

LITHUANIAN LEGAL REGULATION OF THE RIGHT TO RELIGIOUS EDUCATION

This part of the article analyses national legal framework and jurisprudence in Lithuania related to compulsory education in light of freedom of thought, religion and conscience. Analysis of the laws that detail the constitutional provisions allow the right and

⁴⁰ The Constitution of Malta, Article 2.2, 2.3. <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8566&l=1>.

⁴¹ The Constitution of Belgium. http://www.servat.unibe.ch/icl/be00000_.html.

⁴² STREETER, M. “*France is a secular state. But what does that mean?*”. <http://www.frenchentree.com/societe-francaise/displayarticle.asp?id=20486>.

⁴³ Constitution of France, Preamble. http://www.servat.unibe.ch/icl/fr00000_.html.

⁴⁴ Religious Education in France. <http://archive.catholicerald.co.uk/article/10th-november-1944/1/religious-education-in-france>.

freedom to acquire religious education based on individual religious convictions related to state recognized religions. The legal framework, however, allows certain ambiguities as to how effectively may the right to religious education be realized.

The Constitution of Republic of Lithuania guarantees the right to education to its citizens and makes the education until 16 years of age compulsory.⁴⁵ It also ensures the freedom to choose religions.⁴⁶ The Law on Education⁴⁷ and the Law on Religious Associations and Communities⁴⁸ provide that parents and guardians of the minor are free to choose religious studies for their children. The freedom of religion is not solely an independent right because it is directly related to the right of education and right to choose religious education during compulsory education. “Each human being shall have the right to freely choose any religion or belief and, either alone or with others, in private or in public, to profess his or her religion, to perform religious practices, to practice and teach his or her belief ... Parents and guardians shall, without restrictions, take care of the religious and moral education of their children and wards according to their own convictions”.⁴⁹ Therefore, religious up-bringing and education of the child involves and is highly dependent on how well it is implemented during the process of compulsory education.

Another interesting observation arises from the analysis of the Article 26 of the Constitution of Lithuania, is that there is an increasing role and involvement of the parents in the religious upbringing of the parents (the right of the parents to freely educate and up-bring their offspring is a universally accepted right of the parents). However, in an increasingly diversified modern day society, when a large number of families reflect a mixed representation of religious background, a question of individuality of each of the parent’s convictions arises. This issue becomes important in light of the right of the parents to demand for a certain religious teaching of their child, when each of the parents requests for a religious teaching that corresponds with his or her religious beliefs.

While analyzing constitutional regulation in Lithuania three important aspects in light of religious education occur: 1) right to education; 2) right to religion; 3) right and duty of parents to raise their children and educate them accordingly. In this part of the article the right to religion is discussed through the prism of religious education and how this right is actually implemented during the period of compulsory education.

There is no state religion in Lithuania⁵⁰ and subsequently, state and church act separately, thus “freedom of thought, religion and conscience becomes a subject of legal regulation only to such extent to which a human expresses his or her thoughts or religion by action. A sole confession of individual religion or belief is a sphere of private life and matter and such a state may in no way be infringed”⁵¹. Freedom of religion, in such aspect, is an absolute human right. An indisputable human freedom is also a right of non-disclosure

⁴⁵ The Constitution of Republic of Lithuania. *Official Gazette*. 1992, No. 33-1014, Art. 41.

⁴⁶ The Constitutions of Republic of Lithuania. *Official Gazette*. 1992, No. 33-1014, Art. 26.

⁴⁷ Law on Education of the Republic of Lithuania. *Official Gazette*. 1991, No. 23-593.

⁴⁸ The Law on Religious Associations and Communities. *Official Gazette*. 1995, No. 89-1985.

⁴⁹ The Constitutions of Republic of Lithuania. *Official Gazette*. 1992, No. 33-1014, Art. 26.

⁵⁰ The Constitution of Republic of Lithuania. *Official Gazette*. 1992, No. 33-1014, Article 43.7 of the Constitution of Lithuania provides that there is no state religion in Lithuania.

⁵¹ Decision by the Constitutional Court of Republic of Lithuania, January 24th, 1995.

of individual view regarding matters of religious or non-religious nature.⁵² State neutrality and secularity cannot serve as grounds for discrimination of religious individuals, constraining their rights and freedoms, such conditions presuppose non-involvement of the state into internal life of churches and religious organizations.⁵³ However, the state is responsible for establishing an educational system and assuring secondary education. According to the current educational system, teaching of religion in public educational institutions is organized during school time both in primary and in secondary levels. Article 40.1 of the Constitution also provides that state and municipal educational institutions are secular, and on request of parents provide religious education. Article 40.2 of the Constitution provides that non-state establishments of teaching and education may be founded according to the procedure established by law.⁵⁴

Article 41.1 of the Lithuanian Constitution states that education is compulsory for persons under the age of 16, thus the Constitution of Republic of Lithuania embeds the right, as well as duty, of children, to be educated until the age of 16.⁵⁵ Article 38.6 states that “The right and duty of parents is to bring up their children to be honest people and faithful citizens and to support them until they come of age.”⁵⁶ There are also other laws that affirm the right and obligation to be educated, the duty of parents to ensure that the child attends an educational institution, the right granted to parents by Article 26.5 of the Constitution to choose and freely care for children, - a principle that is detailed by the laws related to education and religion.

As mentioned above, there are several constitutional provisions related to the right of religion, as well as those, related to the right to religious education. Article 26 of the Constitution of Lithuania provides for freedom of thought, conscience and religion; the right of each human being to freely choose any religion or belief and, either alone or with others, in private or in public, to profess his religion, to perform religious practices, to practice and teach his belief. Freedom of thought, religion and conscience is an unrestricted right protected by Article 26.1 of the Constitution as one of the fundamental human rights. This right ensures a possibility for outlook of various people to live in an open, just and sustained public society. This freedom is not only a self-sustained democratic virtue, but an important guarantee that other constitutional human right shall be implemented to the fullest extent. The Constitution affirms that no one may compel another person or be compelled to choose or profess any religion or belief. Freedom of a human being to profess and spread his religion or belief may not be limited otherwise than by law and only when this is necessary to guarantee the security of society, the public order, the health and morals of the people as well as other basic rights and freedoms of the person; parents and guardians shall, without restrictions, take care of the religious and moral education of their children and wards according to their own convictions.

⁵² Decision by the Constitutional Court of Republic of Lithuania June 13th, 2002. *Official Gazette*. 2000, No. 49-1424.

⁵³ Decision by the Constitutional Court of Republic of Lithuania December 22nd, 2011. *Official Gazette*. 2011, No.160-7591.

⁵⁴ The Constitution of Republic of Lithuania. *Official Gazette*. 1992, No. 33-1014.

⁵⁵ The Constitution of Republic of Lithuania. *Official Gazette*. 1992, No. 33-1014, Art.41.

⁵⁶ The Constitution of Republic of Lithuania. *Official Gazette*. 1992, No. 33-1014, Art. 38.

Article 29.2 of the Constitution states that the rights of the human being may not be restricted, nor may he be granted any privileges on the ground of gender, race, nationality, language, origin, social status, belief, convictions, or views. Article 41.1 of the Constitution also states that education is compulsory for persons under the age of 16. According to Article 43.1 of the Constitution the state recognizes traditional churches and religious organizations, and other churches and religious organizations (if they have support within community, and their teachings and practice do not confer with law and moral). Article 43.3 states that churches and religious organizations shall be free to proclaim their teaching, perform their practices, and have houses of prayer, charity establishments, and schools for the training of the clergy. Article 43.6 provides that teachings proclaimed by churches and religious organizations, other religious activities and houses of prayer may not be used for purposes which are in conflict with the Constitution and laws.

It is noted, while systematically interpreting the provisions of Article 26, that freedom of thought, religion and conscience is inseparable from other human rights and freedoms embedded in the Constitution: freedom to have their own convictions and express those freely, freedom to search, receive and disperse information and ideas (Article 25.1-2), general criteria of exercising of human rights and freedoms embedded in Articles 27 and 28 freedom to freely assemble into communities and associations, and not to be forced to join any community or association (Article 35.1-2), the rights of parents to educate their children as honest individuals and loyal citizens (Article 38.6), right to culture, science and research, as well as enunciation (Article 42.1), also other rights and freedoms embedded in the Constitution.

The constitutional provisions are further detailed in other laws related to compulsory education and religious teaching during the period of compulsory education. The Law on Religious Associations and Communities⁵⁷ provides a more detailed regulation of religious studies. Article 5 of the above mentioned law states that there are nine traditional religious associations and communities (based on historical, spiritual and social heritage): Roman Catholic, Greek orthodox, evangelic Lutheran, evangelic Reformat, orthodox, old believers, Jewish, Muslim Sunnite, and Karait. According to Article 5.1 of the same law religious education is chosen as part of moral education. Moral education is part of primary, main and secondary education. On request of parents (guardians) the subject of religious education can be included in the pre-school education of the child. Non-formal religious education and self education can be carried out as well. Article 5.2 of the same Law further provides that a student of primary, main and secondary educational institution that has reached the age of 14 year has a right to choose one of the compulsory subjects of moral education: religion of traditional religious association or community, or ethics. Article 5.3 states that parents (guardians); or state institutions that provide foster care (if the child is an orphan), based on religious views practiced by the relatives of the child, choose between the subject of religious education or ethics for the students younger than 14 year of age.

Article 9 of the Law on Religious Associations and Communities provides more detailed regulation related to the course of religious education as such. The article states that reli-

⁵⁷ The Law on Religious Associations and Communities. *Official Gazette*. 1995, No. 89-1985.

religious education can be taught in prayer houses, public and non-public educational institutions, as well as other premises and places. Article 9.2 of the same law provides that religions of traditional and other state recognized religious associations and communities in public educational institutions can be taught on request on parents (guardians). According to Article 9.3 the State also recognizes teaching of religion of traditional and other state recognized religious associations and communities in confessional educational institutions (Sunday schools or other educational groups) provided that the religious education program is registered in the ministry of Education and Science of Republic of Lithuania and proof of teachers religious qualification is also provided along with the request from the senior member of the religious association or community.

Article 5 of the same Law contains provisions for the educational programs related to religion. Article 5.4 of the Law states that the religious education program in a formal educational institution (excluding higher education institutions) is prepared by a corresponding traditional or other recognized religious association or community, which is later evaluated by the senior member of that association or community as well as the Ministry of Education and Science and Minister of Education and Science. According to Article 5.5 a person is eligible to teach any formal education program (excluding higher education) if he or she has higher or vocational education degree and qualification of an educator, or has an adequate special training required. Such person is required to have a permit to teach religion issued by and according to order provided by the traditional religious association of community. The order of teaching of religious education is regulated by other laws of education, as provided by article 9.5 of the same Law.

Article 31 of the Law on Education⁵⁸ is related to the right of religious education, and ensures the right of parents (guardians) to include the religious education as part of the educational program of the child, and the right of the child 14 year of age (and older) to choose religious education (Articles 31.2-3). Article 31.4 provides that a religious education teaching program in formal educational institutions (except those of higher education) is prepared by an appropriate traditional religious community or association, and is reviewed and confirmed according to competence by the heads of the community and the Minister of Education and science. Article 31.5 prescribes qualification requirements for the teachers or religious education classes. An important provision of the on Education is that of Article 31.6 which states that if a school is unable to provide a proper religious education of traditional religion, as requested by the parents or guardians of the child (or the child himself, when he or she becomes 14 years of age), the school must give credit to the teaching course of religion provided by Sunday school or other religious teaching school (which are non-formal), provided that the educational programs of the latter meet qualitative requirements mentioned by Article 31.4 and 31.5.

Provision of Article 31.5 is clear and unambiguous and does not pose a conflicting situation while applying this legal norm to implement the right to religious education and is related to qualification requirements of teaches of religious studies.⁵⁹ However, a colli-

⁵⁸ Law on Education of the Republic of Lithuania. *Official Gazette*. 1991, No. 23-593.

⁵⁹ A person must obtain high or higher education of a teacher or obtain a special training; such person must have a permit by the traditional religious community or its heads; Article 31.5 of the Law on Education; Law on Education of the Republic of Lithuania. *Official Gazette*. 1991, No. 23-593.

sion is embedded in Article 31.4 requirements for which must be met, in order for it religious education program to be credited by a state educational institution, which is unable to provide the traditional religious teaching requested by parents, guardians or the child. All of the provisions of the Article 31.4 are related to educational programs at *formal* educational institutions. This means that a religious education program can be registered only for a formal educational institution. Requirements for religious educational programs of Sunday schools or other religious education programs are not provided. The provision, therefore, quashes the right to religious education of child according to the request by parents, guardians or the child embedded in Article 31.6. The non-formal religious education institutions would be, therefore, either forced to teach their children according to programs registered by formal educational institutions, which might not fit with the requested religious convictions of parents, guardians, and the child, or else teach the religious education course, but it would not be credited by the school of the child, as it would be impossible to register such a course as it is required by Article 31.4.⁶⁰

An important issue arising from the analysis of legal provisions is the involvement of parents in the up-bringing and education of their children, based on their religious views and convictions. Parents sharing similar views and opinions regarding the worldly and religious outlook poses no particular controversy in light of possible infringement of the right of the child to receive proper and effective religious education. The issue of globalization, however, brought about certain social changes like, for example, an increased formation of mixed marriages (as to race, religion, nationality), which very often means that two individuals share different views and opinions regarding their religious convictions (for example, according to the State Department of Statistics of Republic of Lithuania there were 16.8%⁶¹ of mixed marriages out of all marriages in 2010). Hence, the issue at stake here is deciding an opinion of which parent individually shall prevail in case, when the requests of the parents in regard of their child's religious education should disperse. The existing legal framework related to religious education in Lithuania leaves this question unanswered. It would comply with the national and international legal regulation to leave this issue to be decided by parents themselves in a private sphere, and the state should solely ensure the opt-out course of ethics and remain neutral in its position regarding religious education.

CONCLUSIONS

1. Summarizing the right of freedom to religion in the context of its relation to other constitutionally protected rights, it is clear that a right to freedom of religion is not only an individual, unattached right, but it is directly related to a plethora of other rights that concretize the right to freedom of religion, such as, the right to have one's own beliefs, convictions and express them freely, freedom to acquire, receive and spread information and ideas, freedom of assembly and association, right of parents to educate their children according to their religious beliefs, and, consequently, the right to education.

⁶⁰ Article 31 of the Law on Education; Law on Education of the Republic of Lithuania. *Valstybės Žinios*. 1991, No. 23-593.

⁶¹ <http://www.stat.gov.lt/lt/news/view/?id=9388>.

2. The states are bound by international and national constitutional provisions to certain obligations to ensure that a child's right to freedom of religion is not infringed. There is no imperative provision that ensures the right to religious education per se, however, the international treaties foresee, that the involvement of the state in the matters of religious education of the child is allowed to such extent that ensures the right to religion.

3. The right of the child to religious education (and up-bringing) is related to the right of parents (or guardians) to educate and raise their children according to their religious views and convictions. However, in a global society where an increasing number of families with mixed religious affiliations are formed, the question of individual parental priority in deciding which religion shall concur in child's up-bringing and education arises.

4. Analyses of regional legal provisions shows that religious freedom is recognised in all EU member states and religious instruction could be provided in the state schools, and separate models of religious education: 1) compulsory confessional one particular religion with opt-out; 2) compulsory religious education of different religions with the possibility to opt out or to attend alternative classes (ethics), 3) voluntary religious education, offered at request of parents or pupils.

5. The state of Lithuania ensures proper religious education, in essence, only under religious education programs registered by formal educational institutions. The state regulations related to religious education, however, leave certain loopholes that allow their loose interpretation, which may lead to possible infringement to the right to religious education to state recognized religions that do not have appropriate religious education teaching programs registered by the formal educational institutions and that are taught at non-formal religious education institutions.

6. The legal framework related to religious education in Lithuania contains legal collisions, because, for example, legal provision that ensure a right to receive religious education in other religious educational institutions, if a formal educational institution is unable to provide the requested religious teaching (according to the desire of the child), and if the religious teaching program of non-formal religious education meets legal requirements, is quashed by the provision of another legal clause, which provides requirements for religious education program only for the formal educational institutions.