

CONSTITUTIONAL AND LEGAL ASPECTS OF TEACHING ABOUT RELIGION IN THE BULGARIAN SCHOOL

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Introduction

This paper originated from a contribution to the “Conference on Religion, Beliefs, Philosophical Convictions and Education - From Passive Toleration to Active Appreciation of Diversity” held in Bruges in December 2010. It reflects on the debates held during the conference and provides an overview of the issues raised in the context of the Bulgarian legal system.

Teaching of religion in schools reflects the history of a society, its cultural heritage and the constitutional system of the country. It also reflects the protection of human rights the respect of which is enforced by the constitution and the international law, and particularly by the European Convention on Human Rights.

The main question is whether religion should be necessarily a part of the school curriculum and if so what would be the guarantees that right to education and freedom of religion are enforced in a balanced and proportionate way.

These questions are explored below in their constitutional and legal context and the concrete rules of the legislation in force.

Constitutional Law and Practice

The Bulgarian Constitution of 1991 recognises the right to education and freedom of religion as human rights. It also sets up the principle of a secular state where the Orthodox Christianity is a traditional religion. The Law on Religious Denominations adopted in 2002 clarifies and lays down detailed provisions on the status of denominations and the scope of the freedom of religion.

Right to education

Article 53 of the Constitution recognises that everyone shall have a right to education and sets up the conditions for the establishment of schools and the financial commitment of the state:

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Article 53

- (1) Everyone shall have a right to education
- (2) The school education shall be compulsory as up to 16 years of age
- (3) The primary and secondary education in the state and municipal schools shall be free of charge.
- ...
- (5) Citizens and organisations may set up schools under conditions and by a way as established by law. Instruction in these schools must comply with the requirements as set up by the state.
- (6) The State shall encourage the education by setting up and financing schools, supporting gifted pupils and students, creating conditions for vocational training and re-qualification. It shall control over all schools of every type and grade.

Article 6 (6) on the Law on Religious Denominations recognises the right to give and receive religious education in any language as a matter within the scope of freedom of religion. This is separate and independent from the teaching of religion in places considered appropriate by religious denominations in accordance with paragraph 7 of the same article.

At the same time the right to accede to cultural heritage has a constitutional status:

Article 54

- (1) Everyone shall be able to benefit from the national and universal cultural heritage and to develop his or her culture in accordance with his or her ethnic belonging. This right shall be recognised and guaranteed by law.

Therefore, the Bulgarian constitution sets up the right of education in relation to the respect for that part of human conscience that shapes also the sense of belonging to a certain community.

In a similar way the Constitution sets up a framework for tolerance among people belonging to different faiths and religions.

Status of Religions

Article 13 of the Bulgarian Constitution lays down the principles regarding the place of religion in the public life. Accordingly, religious denominations are free but their institutions are separated from the state. In addition, paragraph 3 recognizes the Orthodox Christianity as the traditional religion in Bulgaria.

The Constitutional Court consistently held that this provision establishes a separation between the state and religious denomination and the autonomy and independence of the latter.²

The Constitutional Court pointed out that the recognition of the Orthodox Christianity as a traditional religion is an *essential* feature of the Bulgarian Constitution. It clarifies that this provision sets our Constitution in the group of the states with established churches where the state supports the predominant religion.³ The Court, however, does not go that far as to conclude that this provision obliges the state to support actively the Orthodox Christianity in a way similar to the relations between Church and State in the countries with established

² Decision N 5 of 1992 and Decision N 12 of 2003.

³ Decision N 12 of 2003.

churches. The Court explains the special historical role of the Orthodox Church in the Bulgarian national history. At the same time it clarified that the constitutional status of the Orthodox Christian Church is a *moderate* expression of the special role of established churches in the “European constitutional tradition”.

This interpretation refrains from attributing wide privileges and powers of the Orthodox Church as regards its active involvement in the public decision taking and functioning of the public institutions. Nor does it imply any obligations for the citizens to contribute directly to the finances and activities of the Church. It follows, however, that if a decision regarding religion, such as teaching religion in schools, is to be taken, Orthodox Christianity may take a prior role.

Freedom of Religion

Article 37 of the Constitution recognises freedom of religion as a human right:

Article 37

- (1) Freedom of conscience, thought and religion and the choice of religion or religious or atheistic convictions shall be inviolable. The State contributes to the keeping up of the tolerance and respect between believers from different denominations as well as between believers and non-believers.
- (2) The freedom of thought, conscience and religion shall not aim against national security, public order, and public health or against rights and freedoms of other citizens.

In line with the established case-law of the European Court of Human Rights, the Bulgarian Constitutional Court recognises two aspects of this right:

- the internal one, the so-called “*forum internum*” related to personal beliefs and convictions that is inviolable, and
- the manifestation and expression of the freedom of religion that must respect beliefs of others and could be subject to certain restrictions when these are lawful and proportionate.⁴

The Law on Religious Denominations clarifies further

A specific element of the scope of the constitutional right is the obligation for the state to uphold tolerance and respect for people of different religion. In this way, Articles 13, 37 and 54 of the Constitution establish the principle of a neutral secular state recognising Orthodox Christianity as a traditional religion but promoting tolerance and respect for the right to be of a different belonging. The specific legal framework regarding teaching religion in public schools has to comply with this framework. This paper explores only the place of religion in state-funded educational institutions.

⁴ Decision N 5 of 1992 and Decision N 12 of 2003

Religion in State-Funded Educational Institutions

Main Legal Acts

The general rules and principles of the educational policy in Bulgaria are laid down in the Constitution and the Law on National Enlightenment⁵ and its implementing rules⁶. These implementing rules create further a legal basis for the adoption of detailed instructions regarding teaching of religion by the Minister of Education. These instructions were adopted in 2003 and are still in force.⁷

Main Principles

Secular subject

The place of religion in school curricula in Bulgaria is similar to the French concept of teaching about “religious facts” as adopted in 2002.⁸

By virtue of Article 5 of the Law on the National Enlightenment and in accordance with the constitutional principle of separation of church and state, education in Bulgaria is secular. Religion is taught both in primary and in secondary schools.⁹

Article 4 of the Implementing rules of the law prohibits religious indoctrination in schools and requires that religions are to be studied in their historic, philosophic and cultural plan through the content of the curriculum of various subjects. This provision applies to secular schools only and does not inhibit the right of denominations to set up special educational institutions in line with the specific precepts of their religion.¹⁰

Non-compulsory subject

Religion can be taught in two types of classes that do not form a part of the core school curriculum:

- in classes referred to as “optional with an obligation to choose”, meaning that pupils have to attend a certain number of those classes at their choice, or
- in classes referred to as “fully optional” meaning that those are classes which may be chosen completely at the discretion of pupil.¹¹

⁵ Promulgated in State Gazette N 86 of 18 October 1991, last amendment came into force on 5 October 2010

⁶ Implementing Rules of the Law on National Enlightenment, passed by the Minister of Education and published in State Gazette N 68 of 30.07.1999, last amendment came into force on 8 June 2010

⁷ Instruction N 2 of 23.06.2003 regarding teaching of the school subject “Religion”, issued by the Minister of Education and Culture, promulgated in State Gazette N 60 of 4.07.2003, in force as of 4.07.2003.

⁸ For a comparative analysis of the various system of teaching religion in state schools *see* Luce Pepin “Teaching about Religions in European School Systems- Policy Issues and Trends”, published by NEF Initiative on Religion and Democracy in Europe.

⁹ Articles 6 and 7 of of Instruction N 2 concerning teaching of the subject “religion”

¹⁰ Article 33 of the Law on Religious Denominations allows for the establishment of such educational institutions by denominations that are duly registered.

¹¹ Article 1 of Instruction N 2 concerning teaching of the subject “religion”

As a school discipline, religion is taught as a comparative subject covering more than one religion. The religious views of the pupils and their parents are taken into account. Once chosen as a subject, religion is taught in one class per week. There is an option to study “Religion-Christianity” focused mainly on the Orthodox Church. These classes are in the upper primary and in secondary school. In the primary school there are also classes in “Religion-Islam”. There is a subject “World Religions”. It is taught in the last school year.¹²

There are areas in Bulgaria where the predominant part of the population adheres to the Islamic faith.

Teachers must have an appropriate education in humanities or must have graduated from a theological Christian faculty or from the High Islamic Institute.¹³

Future changes

There is an on-going public debate about the introduction of the subject “religion” as a compulsory school discipline.¹⁴ The question refers to teaching religion as such. Although the question is voiced by the Orthodox Church and the Christian community, teaching of Islam for those who wish this has never been questioned. The main arguments of the supporters of this idea are the positive ethical impact that religion would have on young people.

The Ministry of Education is working on a new general law on education. The government has established that the legal framework on the primary and secondary education needs more comprehensive changes. The main elements of the draft law are:

- defining religion as “an overview of the basic religions in the world” for the sake of better understanding of cultural differences among people,
- compulsory teaching of religion, and
- introduction of a class on religious faith albeit taught in a secular way, that must be a part of the classes among those a number of which must be chosen¹⁵

Nevertheless, the public debate is still ongoing and both the protagonists and the opponents of the idea to have compulsory classes on religion are well represented.

Role of the State

The state may support denominations in their educational activities and it has certain control over the content of the subjects taught.

¹² Data available in the paper “The Pedagogical Experience in an Education of Interreligious Tolerance” by Svetla Shapkarova, to be found on line in Bulgarian

¹³ Article 11 of Instruction N 2 concerning teaching of the subject “religion”

¹⁴ See for instance the discussion held in 2008 by the Open Society Institute, available at <http://politiki.bg>, 3/2008 in Bulgarian

¹⁵ The work on a draft law on education has been mentioned by Mrs Svetlana Lomeva, Vice-Minister on Education at the Ministry of Education, Youth and Sport during the parliamentary debates on the proposed amendments to the Law on the National Enlightenment, minutes N 954-01-18 of 15.09.2009, 41-st National Assembly

Support

The state may stimulate educational activities by the religious denominations through financial or other means.¹⁶ More specifically, religious denominations, may receive financial support in the form of tax and customs reliefs, credit or other financial or economic stimuli. These forms of financial support are subject to the audit applicable to the non-governmental organisations. Administrative and criminal sanctions apply to any breach of these rules.¹⁷

The main form of state support for religious denominations is the state subsidy allocated and apportioned to all registered denominations under the annual law on the budget¹⁸. The subsidy covers also educational activities of the religious denominations. The apportionment is based on the representativeness of the denominations that have asked for a support.

Denominational Schools

There are five secondary denominational institutions in Bulgaria. Of those two are Christian and three are Muslim. In addition, there are three Christian faculties and one Islamic Institute.¹⁹ The education in these schools is on the same footing as the one received in secular schools on the condition that it does not obstruct the obtainment of the obligatory stages of the state education.²⁰

State Control

Teaching religion as a school subject is based on a concept developed by the Ministry of Education. It is subject to the state supervision applied to all schools.

Denominational schools avail of more freedom as regards their curricula but in order to be recognised they must comply with certain general requirements applied to all schools.

In addition a special Department at the Council of Ministers may take action against instances of indoctrination and other acts that may prejudice the exercise of religious freedoms.²¹ There have been cases where investigation took place on the suspicion of teaching of radical Islam. These claims, however, were not proved.

¹⁶ Article 25 (1) of the Law on Religious Denominations

¹⁷ Article 25 of the Law on the Denominations

¹⁸ Article 28 of the Law on Denominations

¹⁹ Data available in the paper “The Pedagogical Experience in an Education of Interreligious Tolerance” by Svetla Shapkarova, to be found on line in Bulgarian and at <http://bg.islam.blogspot.com>. Legal basis is established by Article 33 of the Law on Religious Denominations

²⁰ Article 33 (2) and (5) of the Law on Denominations

²¹ The powers of the directorate are set up under Title VI of the Law on Religious Denominations

Religious symbols

There are no legal restrictions to wear religious symbols at school.

In 2008 the Commission on the Protection against Discrimination²² considered a case where there were that discriminatory oral warnings against wearing a scarf as well as threats for exclusion from school. The Commission recommended that in so far as there is no law on this issue, the legislator should make a thorough review of the current legal situation and set forth appropriate measures accordingly.²³ The Supreme Administrative Court upheld the decision but annulled that part of it that obliges the Minister on Education to put forth a legislative proposal.

The prohibition of religious symbols, however, is still under discussion and will be considered in the context of discussions of a new law on primary and secondary education.

Legal Analysis

Due to the role of the specific local culture and traditions education is often managed by decentralisation. This is recognised also by the Treaty of the Functioning of the EU (“TFEU”) and the law and practice of the protection of human rights in accordance with the jurisprudence of the European Court of Human Rights in the light of the European Convention on the Protection of Human Rights (“the Convention”) and the Charter on Fundamental Rights (“the Charter”).

More specifically, Article 165 TFEU recognises that the EU supports cooperation as regards teaching but education remains under “the full responsibility of the Member States”.

In a similar way the European Court on Human Rights in the case *Leyla Sahin*²⁴ pointed out that states dispose of a large margin of appreciation: “where questions concerning relationship between state and religions are at stake, on which opinion in a democratic society may differ widely, the role of the national decision-making body must be given special importance... Accordingly the choice of the extent and form such regulations should take must inevitably be left up to a point to the state concerned, as it will depend on the domestic context”.

This principle applies also when there is issue regarding the right to education protected under Article 1 of Protocol 2 to the Convention. Not only does the court recognize the discretion but, as in the *Leyla Sahin* case, it evaluates the situation in case in the light of the constitutional framework in Turkey. Furthermore, when one of the religions, such as Orthodox Christianity has a predominant role, this does not conflict in itself with Article 9 of the Convention.²⁵

The Convention, however, imposes certain limits on the discretion of the State:

²² A specialised quasi-jurisprudential body competent on issues of discrimination, set up in 2004

²³ Decision 38 of 22.02.2008, file N 37/2007

²⁴ *Leyla Sahin v. Turkey*, N 44774/98

²⁵ See for instance *Angelini v Sweden* case, application 10491/83

- firstly, education on or about religion must be done in an objective, critical and pluralistic where there can be no place for misplaced proselytism²⁶,
- the state remains an “impartial organiser of the exercise of various religions, faiths and beliefs”²⁷,
- the right to education does not impose a financial commitment on the state²⁸,
- education must take into account the parents convictions and exemptions from education must be given,
- right to education must not conflict with other rights recognised by the Convention such as the prohibition of discrimination²⁹.

In this context the regulation of teaching on and about religion in Bulgaria is not in conflict with international legal standard. The right to object on religious grounds and to be exempted from attending religious classes as well wearing of religious symbols in public places, however, would require a special attention in the course of the adoption of the new law on primary and secondary education. This would be an issue especially in places where Muslims or Christians are distinct minority and exposure to religious symbolism would be a form of indoctrination.

Conclusion

The constitutional and legal framework in Bulgaria is founded on secularism but has two distinct albeit seemingly contradictory features. On the one hand the Constitution recognises the Orthodox Religion as a predominant religion.

These general principles reflect the principles of human rights as adopted under the European Convention of Human Rights. The principles would be maintained and developed under the future law on primary and secondary education. At the same time the new law may change significantly the place of religion in public schools making it an obligatory subject. This law should ensure a balanced enforcement of human rights with a specific attention to the right to object and be exempted from religious classes as well as to the issue of wearing religious symbols in public institutions.

²⁶ For instance case *Kjelsen, Busk Madsen and Pedersen v. Denmark*, appl. 5095/71, 5920/72, 5926/72

²⁷ See *Leyla Sahin v. Turkey*, N 44774/98 as well as *Hasan and Chaush v. Bulgaria*, appl. 30985/96 and *Kokkinakis v. Greece*, appl. 14307/88

²⁸ *Belgian Linguistics case*, appl. 1474/62, 1677/62, 1769/63, 1994/63, 2126/64

²⁹ *Belgian Linguistics case*, appl. 1474/62, 1677/62, 1769/63, 1994/63, 2126/64