
THE CHILD AND THE FREEDOM OF THOUGHT, CONSCIENCE AND RELIGION

Ionel Didea^{1*} and George Popa²

¹ *University of Pitesti, nr.1, Targu din Vale Str., 110040, Pitesti, Romania*

² *University 'Ovidius', Bd. Mamaia nr. 124, Aleea Universitatii nr.1, Constanta, Romania*

(Received 24 July 2013)

Abstract

Children's rights, just like human rights, are regulated both at national and international level, and belong to all humans starting from birth. Religious freedom is regulated by article 9 of the European Convention on Human Rights – Freedom of thought, conscience and religion. According to article 9, the freedom to manifest a person's religious views cannot be exercised only collectively, in public or in the company of those sharing religious views. It can be done both individually and in private. Moreover, it implies in principle that the right to try to persuade another, for example, through a lesson without which the freedom to change religion or religious conviction would risk remaining unapplied. States are obliged to respect all religions, without the possibility of imposing one or forbidding another, beyond the limits narrowly set by article 9, paragraph 2 from the Convention.

Keywords: freedom, religion, faith, conviction, child

1. Introduction

Children's rights, just like human rights, are regulated both at national and international level, and belong to all humans starting from birth. By acknowledging the rights of the child, we also establish that the child is a soon-to-be adult. Most of these rights are specific of human rights also, i.e. religious freedom, right to petition, right to free speech [1].

2. Religious freedom in the European Convention on Human Rights regulation

Religious freedom is regulated by article 9 of the European Convention on Human Rights – Freedom of thought, conscience and religion. (1. Everyone has the right 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, and to manifest his religion or belief, in worship, teaching, practice and observance. 2. Freedom to manifest one's religion or

*E-mail: prof.didea@yahoo.com

beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.)

The European Court of Human Rights has stated in its decision of the 25 May 1993, in *Kokkinakis vs. Greece*, that freedom of thought, conscience and religion, as sanctioned by article 9 from the Convention, represent the base of a democratic society. With regards to its religious dimension, it represents one of the essential elements in the identity of the faithful and their concept on life.

“If religious freedom firstly pertains to an individual’s internal judgment, it involves also the freedom to express one’s religion. Declaring it through words and actions is connected to the existence of religious conviction.

According to article 9, the freedom to manifest a person’s religious views cannot be exercised only collectively, in public or in the company of those sharing religious views. It can be done both individually and in private. Moreover, it implies in principle that the right to try to persuade another, for example, through a lesson without which the freedom to change religion or religious conviction would risk remaining unapplied.” [European Court of Human Rights, *Kokkinakis vs. Greece*, paragraph 31, 25 May 1993, online at <http://hudoc.echr.coe.int/sites/fra/pages/search.aspx?i=001-62384>]

Those who chose to exercise their religious freedom can do so far from the criticism of others. However, the fact that religions and religious doctrine are opposed or denigrated constitute a problem for which the state can be held responsible, namely to ensure the peaceful observance of the right regulated by article 9 from the Convention [European Court of Human Rights, *Otto-Preminger-Institut vs. Austria*, paragraph 47, 20 September 1994, online at [http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-57897#{"itemid":\["001-57897"\]}](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-57897#{)].

States are obliged to respect all religions, without the possibility of imposing “one or forbidding another, beyond the limits narrowly set by article 9, paragraph 2 from the Convention” [2]. The role of the state, as impartial enabler of religious diversity, faiths and beliefs, concurs with forming public order, religious peace and tolerance in a democratic society [European Court of Human Rights, *Refah Partisi (Parti de la Prospérité) and others vs. Turkey*, paragraph 43, 31 July 2001, online at <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-70954>].

In its jurisprudence, the Court has constantly acknowledged the right of the party states to a certain margin of determining the existence of any influence on the necessity of any interference, along side a European control with the objective being the law and the decisions for its application. The role of the Court consists in establishing whether the measures taken at a national level are justified and proportional to the goal sought.

However, maintaining religious pluralism is inherent to the notion of a democratic society [European Court of Human Rights, *Manoussakis and other vs. Greece*, 26 September 1996, <http://hudoc.echr.coe.int/sites/fra/pages/>

search.aspx?i=001-62629#{"itemid":["001-62629"]}]}. The fact that certain religions are recognized as official state religion leads to the adoption of certain legal stipulations permitting the authorities of the states an exercise of deep inferences in the exercise of religious freedom of practitioners of other religions. The right to religious freedom excludes any favour on the part of the state with regards to limiting religious faith or ways of expressing these. Thus, the Court has appreciated that the system of authority of a religion is not in accordance with article 9 unless it ensures its control in order to meet the conditions stipulated by the law [2, p. 711].

3. National regulations in the field

The evolution of the world and of any society as well as the diversity of human needs and aspirations leads to the expansion of fundamental human rights and liberties. Within the framework of these fundamental rights and liberties, the guarantee of a growing *de jure* and *de facto* rights of children and youths gains greater significance. These two social categories are often not as favoured as the others. It is thus useless to underline the significance of national and international actions for a wider and more effective guarantee of material means and a joint interest of social factors in maintaining the respect of children's rights.

Law 272/2004 states the obligation of public authorities, authorized private bodies, natural persons and legal entities responsible for the protection of children to respect, promote and guarantee "the rights of children established by the Constitution and the law, in accordance with the stipulations of the UN Convention on the rights of the child and other international documents in this field, to which Romania is a party" and "the principle of the best interest of the child".

The active participation of the child in social and juridical life and the growing recognition of the autonomy of the child were accomplished by sanctioning and acknowledging civil rights and liberties. Sanctioned by Law 272/2004 section 1 Chapter II, in the category of civil rights and liberties there are the right of identity, freedom of expression, freedom of thought, conscience and religion, the right to associate, the right to petition, the right to respect personality and individuality, the right of the child to respect the public image and private and family life, the right to petition. All these civil rights and liberties of the child, recognized both in international as well as national legislation – starting with respecting the opinions of the child, freedom of expression, thought, conscience and religion, and the recognition of the right of children to associate in formal and informal structures, the right to peacefully congregate – define a new status for the child, thus newly seen as an independent and autonomous being, a person with rights and freedoms, opinions, needs and feelings. Therefore, the lawmaker changes the child into an active participant in social and juridical life, by sanctioning these civil rights and liberties.

The freedom of thought is one of the main ones, which is tightly connected to the right of the child to form their own opinions and to express them freely. This fact implicitly involves the right to solicit, seek and receive any necessary adequate information. The freedom of conscience involves the right of the child to refuse freely to accept any given conduct contrary to their own conscience, conviction and moral values. Religious freedom involves the right of the child to choose their own religion, without any pressure or limitation.

The law on the protection and promotion of children's rights, acknowledges the same freedom with the possibility to have the guidance and advice if their parents in choosing their religion, beyond any limitation. Also, the law stipulates that children of 14 years could choose their own religion, in accordance with article 491, paragraph 2 from the Civil Code. Art. 25 paragraph 3 from Law 272/2004 establishes that "the child of 16 years old may choose their own religion". Once the Civil Code came into force after this law was passed, we consider that the dispositions of the law concerning the laws on the protection and promotion of the rights of children will change accordingly through civil dispositions. Therefore, art.491 paragraph 2 from the Civil Code states that "the child of 14 years old has the right choose their own religion".

Therefore, guaranteeing the freedom of thought, conscience and religion is accomplished through laws which forbid any actions meant to influence children's religious convictions. In the legal stipulations mentioned, Romania falls into the category of countries allowing children to choose their own religion, without having the faith of their parents imposed on them [3].

The guidance and advice of parents on the choice of religion can be included among their obligations in raising and educating their children. However, considering the fact that the educational curriculum includes religion as a compulsory subject matter, it is important that a child's choice of religion remain beyond a sphere of influence, which in schools could be exercised by educators. Thus, in the way doctrines, cultures and principles are presented, the activity of teachers must limit itself to guidance, so that the child has the possibility to choose their convictions on their own. We consider that it is not by chance that the lawmaker used the term 'guidance' to establish the relations between parents and children in the choice of religion as a consequence of this. Guidance signifies only the orientation of the child in their choice. In case that the parents have different opinions on religion, guidance must be done in a normal framework, appropriate and necessary so that the child can decide on their religious views. As we have previously stated, the mains points of this guidance naturally concern only parents, teachers and the legal representative of a child deprived of parental authority.

We must mention that subsequent to the choice of a religion, the actual practice of that religion poses a series of problems. Firstly, the religion of the child or of the parents may constitute a discriminatory criterion in the exercise of a right – such as the right to education, cultural activities, freedom to associate etc. Therefore, article 27 paragraph 1 from Law 272/2004 sanctions the right to a cultural life, to declare the ethnic origin, religious affiliation and the practice of

the religion of a child belonging to a national, ethnic, religious minority, as any other member of their community. Secondly, it is possible that in certain situations the chosen religion comes into conflict with the principle of the child's best interest. This is the example of certain religions which prohibit necessary medical interventions that ensure the health and proper development of a child and of life.

A particular attention is paid by the Committee on the Rights of the Child to a child with disabilities or one deprived of freedom in choosing and practicing their religion. (Rule 4 from the United Nations Rules for the Protection of Juvenile Deprived of their Liberty states that "must respect the religious and cultural convictions and practices, as well as the moral principles of the juvenile".)

References

- [1] A. Drăghici, *Protecția copilului și a unor categorii de persoane*, University of Pitesti, Pitesti, 2010, 21-26.
- [2] C. Bîrsan, *Convenția europeană a drepturilor omului. Comentariu pe articole*, vol. I, All Beck, Bucharest, 2005, 709.
- [3] A.V. Ciulei, *Caiete de Drept Internațional*, **6(1)** (2005) 48.