

THE RIGHT TO RELIGIOUS EDUCATION IN LITHUANIA

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Abstract. *The article analyzes preconditions of realization of the right to religious education in Lithuania during the period of compulsory education. The article consists of two parts. The essence of the freedom of thought, religion and conscience and their relation to religious education is discussed in the first part. The second part of the article analyses national legal framework related to compulsory education in the light of freedom of thought, religion and conscience. The states are required to ensure education of children according to religious convictions of their parents and needs of the children themselves. The Lithuanian legal regulation, however, allows certain ambiguities as to how effectively may the right to religious education be realised.*

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

Introduction

Relevance of the topic. M.A. Hamilton raised a question “What could be more important in a free society than religious liberty?”¹ It is universally accepted that within the 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”.² The Universal Declaration of Human Rights states the same.³ These rights are embedded in the constitutions of many democratic states and are recognized as constitutional rights. In the context of ongoing processes of globalisation, making these rights constitutionally protected would entail certain issues and obligations for the states that have already recognised or would recognise such rights.

The Constitution of the Republic of Lithuania guarantees the right to education to its citizens and makes the education until 16 years of age compulsory.⁴ It also ensures the freedom to choose religion⁵ The Law on Education⁶ and the Law on Religious Associations and Communities⁷ 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”.⁸ 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.

Core of the topic. Globalisation processes determine that societies within democratic states become more and more diversified which, in time, increases the need to replace a homogenous religious teaching with a more diversified teaching of religion in

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- 1 Hamilton, M. A. *God vs. The Gavel. Religion and the Rule of Law*. New York: Cambridge University Press, 2005, p. 8.
 - 2 European Convention on Human Rights, Art. 9 [interactive]. [accessed on 20-02-2012]. <http://www.echr.coe.int/NR/rdonlyres/D5CC24A7-DC13-4318-B457-5C9014916D7A/0/ENG_CONV.pdf>.
 - 3 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” [interactive]. [accessed on 20-02-2012]. <<http://www.un.org/en/documents/udhr>>.
 - 4 Constitution of the Republic of Lithuania. *Official Gazette*. 1992, No. 33-1014, Article 41.
 - 5 *Ibid.*, Article 26.
 - 6 The Law of the Republic of Lithuania on Education. *Official Gazette*. 1991, No 23-593.
 - 7 Law on Religious Associations and Communities. *Official Gazette*. 1995, No. 89-1985.
 - 8 Constitution of the Republic of Lithuania. *Official Gazette*. 1992, No. 33-1014, Art. 26.

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 religion⁹ or analysis of the status of traditional religion within a state¹⁰, 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 the 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, economic, social, cultural phenomena on the 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 ways 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 world.¹¹ Therefore, challenges arise of the proper ways to formalise and subsequently implement religious teaching in the process of education.

Another interesting observation arises from the analysis of Article 26 of the Lithuanian Constitution, namely that there is an increasing role and involvement of parents in the religious upbringing of their children (the right of parents to freely educate and up-bring their offspring is a universally accepted parental right). However, in an increasingly diversified modern 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 the light of the right of parents to demand 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.

The object of the research: the system of legal regulation of the right to religious education in Lithuania during compulsory education.

The aim of the research: to present a systematic analysis of the legal framework of religious education in Lithuania.

In order to achieve the aim of the research the following tasks were carried out:

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- 9 Vitkauskaitė-Meurice, D. The Scope and Limits of the Freedom of Religion in International Human Rights Law. *Jurisprudence*. 2011, 18(3): 841–857; Vidrinskaitė, S. Tikėjimo ir sąžinės laisvė: konstituciniai pagrindai ir realizavimo ribos Lietuvos Respublikoje [Freedom of Conscience and Religion: Constitutional Foundations and the Limits of Realization in Lithuania]. *Jurisprudencija*. 2006, 12(90): 88–98.
 - 10 Balodis, R. Equality Principle and Status of Predominant Religion (Traditional Religious Denomination) in the Baltic States. *Jurisprudencija*. 2006, 12(90): 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): 131–143; Glodenis, D. Bažnyčios ir valstybės santykių raiška ir ypatumai: racionalaus pasirinkimo prieigos požiūris [Church and State Relations and the Resolution of Features: a Rational Choice Approach]. *Kultūra ir visuomenė, Socialinių tyrimų žurnalas*. 2011, 2(3): 83–100; Lankauskas, M. Valstybės ir bažnyčios atskyrimo principas: lyginamieji aspektai ir teisinė padėtis Lietuvoje [Principle of Separation of Church and State: Comparative Aspects and the Legal Situation in Lithuania]. *Teisės problemos*. 2009, 1(63): 88–119.
 - 11 Rugevičiūtė, G. R. Tikybos pamokų pasirinkimo motyvai ir bendroji katalikų tikybos mokymo programa [Religious Education Choice Motives and the Common Catholic Religious Education Program]. *SOTER*. 2006, 17(45): 69.

1. Revealing the essence of the freedom of right of thought, religion and conscience and their relation to religious education.
2. Analysing the Lithuanian laws and jurisprudence that regulate implementation of the right to religious education during compulsory education.

Methodology of the research: In the course of reaching the objective of the research, analysis of scientific literature was carried out, as well as methods of systemic and analytical-critical analysis of legal acts and international documents were applied.

1. Essence of the Freedom of Religion, Thought and Conscience

Rights to 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 are usually named as fundamental rights, because they are related to very fundamental values for 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.).¹² The rights referred to as the first generation rights are not granted by the state or “given” in any other way. The states are only delegated to protect these rights and to ensure their implementation. Freedom of religion or beliefs, conscience and thought is acknowledged as an individual right to be protected in one’s spiritual and transcendental relationships, moral attitudes and intellectual activity.

“Religion (lot. *religio*) – beliefs explaining world, humanity and a human, as well as rituals that support and realise those beliefs, and public religious organisation”.¹³ Religion is commonly, but not always, associated with traditional majority, minority or new religious beliefs in a transcendent deity or deities. In human rights discourse, the use of the term “religion” also usually supports the right to non-religious beliefs. Office of the General Commissioner for Human Rights of the United Nations issued General Comment No 22 for some provisions of the 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”¹⁴.

12 Birmontienė, T.; Jarašiūnas, E., et al. *Konstitucinė teisė* [Constitutional Law]. Vilnius: LTU, 2002.

13 Vaitkevičiūtė, V. *Tarptautinių žodžių žodynas* [Dictionary of International Words]. Vilnius: Žodynas, 2001, p. 840.

14 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) [interactive]. [accessed on 20-02-2012]. <<http://www.unhcr.ch/tbs/doc.nsf/0/9a30112c27d1167cc12563ed004d8f15>>.

Quite frequently, while describing the right to freedom of religion, a broader right is considered, i.e., the right to choose a world-view. Together with the right to religion, the Constitution of the Republic of Lithuania also encompasses such rights as freedom of thought and conscience. Notions of “thought”, “religion” and “conscience” encompass a large scope of intellectual and spiritual activity. “Thought” is a product of human thinking which resembles how a human recognizes the surrounding world and himself within it, as well as expresses his views, opinions and beliefs. “Religion” is a specific relation between the believers with the content of religion – the acceptance of the doctrine of religion by way of authoritative body. The believer, based on testimony of the authoritative body, accepts statements of the doctrine as truth without justification. “Freedom of conscience” is a human right and a real possibility to freely choose their outlook and act accordingly, proclaim and practice, create, propagate one or other religion or materialistic outlook. These rights become the subject of legal regulation only when a person expresses his/her thoughts or beliefs and the state knows about their existence and nature.¹⁵

Right to freedom of thought, conscience, religion or belief means the right to have a religion or whatever belief of one’s choice and the right either individually or in community with others, in private or public, to manifest a religion or belief through worship, observance, practice and teaching. On the other hand, it means the right not to suffer coercion that impairs the freedom to choose a religion or belief. Thus, the state has the right to limit the manifestation of a religion or belief if recognised by law, and only to such extent as is necessary to protect public safety, order, health, morals and the fundamental rights and freedoms of others.¹⁶

Hence, it is to be noted that 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 is also 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.”¹⁷

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; the right of the child to protection from discrimination and to education

15 Jovaišas, K. (ed.) *Lietuvos Respublikos Konstitucijos komentaras* [Comment of the Constitution of the Republic of Lithuania]. Vilnius: Teisės institutas, 2000, p. 203.

16 *Ibid.*, p. 204.

17 Vitkauskaitė-Meurice, D., *supra* note 9, p. 846.

for tolerance; the right of the child's will when not under the care of parents or legal guardians; the right of the State to limit practices injurious to child's development or health.¹⁸

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",¹⁹ 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".²⁰ 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".²¹

The Convention also emphasises 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."²² 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."²³

Some scholars²⁴ 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".²⁵ It is pointed out that "the context in which spiritual rights are placed is about standard of living".²⁶ With respect to the status of parents (guardians) of the child "Sate Parties are to respect the responsibilities, rights and duties of parents ... to provide, in a manner consistent with

18 UN Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, Article 5 [interactive]. [accessed on 20-02-2012]. <<http://www2.ohchr.org/english/law/religion.htm>>.

19 UN Convention on the Rights of the Child, Article 14(1) [interactive]. [accessed on 20-02-2012]. <<http://www2.ohchr.org/english/law/crc.htm>>.

20 *Ibid.*, Article 2(1).

21 *Ibid.*, Article 2(2).

22 *Ibid.*, Article 20(3).

23 *Ibid.*, Article 29(1)(d).

24 Friedrich Schweitzer – a Professor of Religious Education, Tubingen University.

25 Schweitzer, F. Children's right to religion and spirituality: legal, educational and practical perspectives. *British Journal of Religious Education*. 2005, 27(2): 104.

26 *Ibid.*, p. 104.

the evolving capacities of the child, appropriate direction and guidance”.²⁷ The latter Article also provides that the “primary responsibility” of the parents is to “to secure... the conditions of living necessary for the child’s development”, in particular in regard to nutrition, clothing and housing.²⁸ Article 28 of the Convention is related to education solely, however, it does not in any way relate to religion or spirituality.

In summarising the right of freedom to religion in the context of its relation to other constitutionally protected rights, it is clear that the right to freedom of religion is not only an individual, unattached right, but 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.

The latter conclusion brings about the next, which proposes that 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. Implementation of such a right is mostly left to the disposition of parents. 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.

Another important observation is that the right of the child to religious education (and up-bringing) is undoubtedly 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. In such concurring cases it would be reasonable to leave the issue to the private matter of the parents, and the state should restrain from its involvement by offering an opt-out course of ethics course.

2. The Right to Religious Education during Compulsory Education in Lithuania

The analysis of the constitutional regulation in Lithuania reveals three important aspects in the light of religious education: (1) the right to education; (2) the right to religion; (3) the 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.

27 UN Convention on the Rights of the Child, Article 27(2) [interactive]. [accessed on 20-02-2012]. <<http://www2.ohchr.org/english/law/crc.htm>>.

28 *Ibid.*, Article 27(2).

There is no state religion in Lithuania²⁹ 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”³⁰. Freedom of religion, in that regard, is an absolute human right. An indisputable human freedom is also the right of non-disclosure of individual view regarding matters of religious or non-religious nature.³¹ 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 in the internal life of churches and religious organisations.³² 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 organised during school time both at primary and secondary level. Article 40(1) of the Constitution also provides that state and municipal educational institutions are secular, and on the request of parents they provide religious education. Article 40(2) of the Constitution provides that non-state teaching and education establishments may be founded according to the procedure established by law.³³

Article 41(1) of the Lithuanian Constitution states that education is compulsory for persons under the age of 16, thus the Constitution of the Republic of Lithuania embeds the right, as well as the duty, for children to be educated until the age of 16.³⁴ 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.”³⁵ 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 in the laws related to education and religion.

As referred 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 Lithuanian Constitution 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

29 Constitution of the Republic of Lithuania. *Official Gazette*. 1992, No. 33-1014; Article 43(7) provides that there is no state religion in Lithuania;

30 Ruling of the Constitutional Court of the Republic of Lithuania of 24 January 1995. *Official Gazette*. 1995, No. 9-199.

31 Ruling of the Constitutional Court of the Republic of Lithuania of 13 June 2002. *Official Gazette*. 2000, No. 49-1424.

32 Ruling of the Constitutional Court of the Republic of Lithuania of 22 December 2011. *Official Gazette*. 2011, No.160-7591.

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

34 *Ibid.*, 41 Article.

35 *Ibid.*, 38 Article.

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.

Article 29(2) of the Constitution states that the rights of the human being may not be restricted, nor may they 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 recognises traditional churches and religious organisations, and other churches and religious organisations (if they have support within the community, and their teachings and practice does not confront with law and moral). Article 43(3) states that churches and religious organisations 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 organisations, other religious activities and houses of prayer may not be used for purposes that are in conflict with the Constitution and the laws.

It is to be noted, that the systematic interpretation of the provisions of Article 26 shows 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 them freely, freedom to search, receive and disseminate information and ideas (Articles 25(1) and 25(2)), general criteria for exercising 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 (Articles 35(1) and 35(2)), the rights of parents to educate their children as honest individuals and loyal citizens (Article 38(6)), the right to culture, science and research, as well as enunciation (Article 42(1)), also other rights and freedoms embedded in the Constitution.

Freedom of thought, religion and conscience is also inseparable from the constitutional principles of human equality, non-discrimination and non-privilege (Articles 29(1) and 29(2)), state recognition of registration of marriage at church (Article 38(4)), secularity of state and municipal educational institutions (Article 40(1)), state recognition of traditional churches and religious organisations in Lithuania, if they correspond with the criteria provided by the Constitution (Article 43(1)), freedom of religious activity (Article 43(3)), freedom of management of churches and religious organisations (Article 43(4)), absence of state religion (Article 43(7)), and universal constitutional principle

of the rule of law as well as the goal to seek an open, just, sustainable civil society proclaimed in the preamble of the Constitution, other constitutional principles.

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 Communities³⁶ provides for 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 is also possible. 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 the 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 for a more detailed regulation related to the course of religious education as such. The article states that 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 recognised religious associations and communities in public educational institutions can be taught on the request of parents (guardians). According to Article 9(3), the State also recognises teaching of religion of traditional and other state recognised religious associations and communities in confessional educational institutions (Sunday schools or other educational groups), provided that the religious education programme is registered with the Ministry of Education and Science of the 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 said Law contains provisions for the educational programmes related to religion. Article 5(4) of the Law states that the religious education programme in a formal educational institution (excluding higher education institutions) is prepared by a corresponding traditional or other recognised 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 the Minister of Education and Science. According to Article 5(5), a person is eligible to teach any formal education

36 Law of the Republic of Lithuania on Religious Associations and Communities. *Official Gazette*. 1995, No. 89-1985.

programme (excluding higher education), if they have higher or vocational education degree and qualification of an educator, or an adequate special training required. Such person is required to have a permit to teach religion issued by and according to the order established by the traditional religious association of the community. The arrangements for teaching religious education are regulated by other laws on education, as provided for in article 9(5) of the said Law.

Article 31 of the Law on Education³⁷ 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 programme of the child, and the right of the child who 14 year of age (and older) to choose religious education (Articles 31(2) and 31(3)). Article 31(4) provides that a religious education teaching programme 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 teachers or religious education classes. An important provision of the Law on Education is that of Article 31(6), which states that if a school is unable to provide 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 informal), provided that the educational programmes of the latter meet the qualitative requirements referred to in Articles 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 the qualification requirements of teaches of religious studies.³⁸ However, a collision is embedded in the requirements to be met in accordance with Article 31(4), in order for the religious education programme 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 the provisions of Article 31(4) are related to educational programmes at *formal* educational institutions. This means that a religious education programme can be registered only for a formal educational institution. There are no requirements set for religious educational programmes of Sunday schools or other religious education programmes. The provision, therefore, quashes the right to religious education of the child according to the request of parents, guardians or the child embedded in Article 31(6). The informal religious education institutions would be, therefore, either forced to teach their children according to programmes registered by formal educational institutions, which might not match the requested religious convictions of parents, guardians, and the child, or else teach the religious education

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

38 „A person must obtain high or higher education of a teacher or undergo special training; such person must have a permit by the traditional religious community or its heads”. Article 31(5) of the Law of the Republic of Lithuania on Education. *Official Gazette*. 1991, No. 23-593.

course, but it would not be credited by the school of the child, as it would be impossible to register such a course as required by Article 31(4).³⁹

Another important issue that arises from the analyses of the provisions of the Constitution and other laws detailing the latter is the involvement of parents in the up-bringing and education of their children, based on their religious views and convictions. Involvement of both parents sharing similar views and opinions regarding the worldly and religious outlook poses no particular controversy in the light of possible infringement of the right of the child to receive proper and effective religious education as his or her parents so desire. However, the issue of globalisation 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 the Republic of Lithuania, there were 16.8%⁴⁰ of mixed marriages out of all marriages in 2010). Hence, the issue at stake here as to which parent's opinion would prevail in a case where individual requests of parents with regard to 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 op-out course of ethics and remain neutral in its position regarding religious education.

Conclusions

1. The right to freedom of religion is not just an individual, unattached right, but it is directly related to a set of other rights, 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, the right of parents to educate their children according to their religious beliefs, the right to education. 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 during the educational process.

2. The right of the child to religious education (and up-bringing) is undoubtedly 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 the child's up-bringing and education arises. The international legal regulation implies that religious education is a private matter, most of all a parental concern and the state should be involved only indirectly. Therefore, the decision in such concurring cases should be adopted by parents in the private sphere.

39 Law on Education of the Republic of Lithuania. *Official Gazette*. 1991, No. 23-593, Article 31.

40 Press Release of the Lithuanian Department of Statistics [interactive]. [accessed on 15-03-2012]. <<http://www.stat.gov.lt/lt/news/view/?id=9388>>.

3. There is no imperative provision that protects the right to religious education *per se*, and that such a right should be guaranteed by the state. However, international treaties allow the involvement of the state in the matters of religious education of the child to such extent that it ensures the right to religion.

4. Lithuania ensures proper religious education, in essence, only under religious education programmes registered by formal educational institutions – these are religious educational programmes approved by the state, as prescribed by Article 31 of the Law on Education. The state regulations related to religious education, however, leave certain loopholes that allow their loose interpretation, which may lead to possible infringement of the right to religious education in state recognised religions that do not have appropriate religious education teaching programmes registered by the formal educational institutions and that are taught at informal religious educational institutions.

5. The state regulations related to religious education, however, leave certain loopholes that allow their loose interpretation, which may lead to possible infringement of the right to religious education to other state-recognised religions (for example, unclear qualification requirements for a teacher of religious classes, no teaching programmes for classes of other religious denominations are registered in the Ministry of Education and Science, except that of catholic denomination).

6. The legal framework related to religious education in Lithuania contains legal collisions – the right embedded in Article 31(6) of the Lithuanian Law on Education to obtain religious education in other religious educational institutions, if a formal educational institution is unable to provide the requested religious teaching according to the conviction of a traditional religion, and if the religious teaching programme of informal religious education meets the requirements of Article 31(4) of the same law, it is quashed by the provision 31(4), because it describes the requirements for religious education programme only with respect to the formal educational institutions. Therefore, Article 31(4) of the Law on Education should be amended so as to include informal religious educational institutions.

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TEISĖ Į RELIGINĮ ŠVIETIMĄ LIETUVOJE

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Santrauka. Straipsnyje analizuojamos teisės į religinį švietimą prielaidos privalomojo pradinio ir vidurinio ugdymo proceso metu Lietuvoje. Teisė į religinį švietimą kyla iš susijusių pagrindinių teisių, tokių, kaip minties, tikėjimo ir religijos laisvė, teisė laisvai pasirinkti bet kurią religiją ar tikėjimą, teisė auklėti savo vaikus pagal savo įsitikinimus, teisė ir pareiga mokytis iki 16 metų, teisė gauti informaciją ir kt.

Straipsnį sudaro dvi dalys. Pirmoje dalyje analizuojamos konstitucinės teisės į minties, tikėjimo ir sąžinės laisvę esmė bei su religijos laisve susijusi teisė į religinį švietimą. Pristatoma tarptautinių ir nacionalinių teisės aktų, susijusių su religijos laisve ir vaiko teisių apsauga, sisteminė analizė. Valstybėms keliamas uždavinys užtikrinti vaikų ugdymą, atsižvelgiant į tėvų įsitikinimus ir vaikų poreikius. Dėl globalizacijos procesų visuomenė tampa kultūriškai nevielytė, todėl valstybėms tenka sudėtingas uždavinys vienodai užtikrinti skirtingus, su religiniu švietimu susijusius, visuomenės narių interesus.

Antroje straipsnio dalyje analizuojamas teisės į religijos laisvę ir tikybos mokymą privalomojo lavinimo procese teisinis reguliavimas. Atlikus nacionalinių teisės aktų analizę, išryškėjo teisinio reguliavimo disfunkcijos. Įstatymai numato teisę tėvams (globėjams) rūpinti religiniu ir doroviniu vaikų auklėjimu pagal savo įsitikinimus: tai apima teisę rinktis tradicinės religinės bendruomenės ar bendrijos tikybos mokymą valstybinėse mokymo įstaigose. Pagal šiuo metu galiojančius įstatymus formalaus švietimo įstaigos, teikiančios privalomąjį ugdymą, vaikams turi suteikti galimybę mokytis tikybos, atsižvelgiant į vaiko (jeigu jam yra sukakę 14 metų) arba jo tėvų (globėjų) prašymą. Tačiau įstatyme nėra numatyta, kurio iš tėvų prašymas dėl tikybos mokymo turi būti tenkinamas tuo atveju, jeigu tėvų religiniai įsitikinimai ir prašymai dėl tikybos mokymo skiriasi. Tokiu atveju, remiantis tarptautiniais teisės aktais, apsisprendimo dėl religinio mokymo laisvė yra privatus šeimos reikalas, o valstybinė mokykla turėtų užtikrinti alternatyvaus dorovinio mokymo dalyko – etikos – dėstymą.

Lietuvos teisės aktai numato, jog tuo atveju, kai mokykla negali užtikrinti religinio mokymo, atitinkančio vaiko ar tėvų reikalavimus, ji privalo įskaityti mokiniui tikybos mokymą sekmadieninėje mokykloje ar kitoje tikybos mokymo grupėje pagal įstatyme numatytus kokybinius reikalavimus. Formaliai įstatymas numato teisę į tikybos mokymą, atitinkantį vaiko ir tėvų religinius įsitikinimus nevalstybinėje religinio mokymo įstaigoje (sekmadieninėje mokykloje), tačiau įskaityti tikybos mokymą, teikiamą neformaliojo švietimo institucijoje, galima tik pagal formaliojo švietimo įstaigoje parengtą ir Švietimo ir mokslo ministro patvirtintą tikybos mokymo programą. Toks teisinis reguliavimas iš esmės eliminuoja galimybę neformaliojo švietimo įstaigoms patvirtinti tikybos mokymo programą, o tai, savo ruožtu, panaikina galimybę įskaityti mokinio ir jo tėvų įsitikinimus ir pageidavimus atitinkantį tikybos mokymą.

Reikšminiai žodžiai: žmogaus teisės, teisė į mokymąsi, teisė į religijos laisvę, teisė į religinį mokymą.

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