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ON RELIGIOUS INSTRUCTION IN PUBLIC SCHOOLS,
A SECOND TIME

This text represents a response to the polemic view written by Prof. Dr. Sima Avramovic that he had published in the first issue of this journal last year,¹ and which was the result of my article on the right of children to religious freedom in the school, also published in the „Annals of the Faculty of Law in Belgrade.“²

Professor Avramovic begins his texts with the statement that „only legal arguments should be utilized“ ... (by lawyers and professors of law who are expressing their opinion on such issues)...and that matters relating to the educational justification of religious instruction, significance of religion, philosophical problems of evolutionism and creationism, should be left up to other experts, and that unfounded value judgements should be particularly avoided.“³

Regretfully, I must admit, that my thoughts on this matter are entirely contrary to his. Namely, the public school system is in fact an activity of public significance, and the intendment of public schools is to set the foundation of not only the education but the upbringing of future citizens. Therefore, the question of educational justification of all teaching content is inseparably tied to the values which are passed onto generations of young people by way of these contents. Therefore, a discussion on values can in no way be a „forbidden theme“ for insight of the

1 See Avramovic, S., Pravo na versku nastavu u našem i uporednom evropskom pravu (Right to religious instruction in the Domestic and Comparative European Law), Anali Pravnog fakulteta u Beogradu, br. 1/2005, pp. 46–64.

2 See Draskic, M., Pravo deteta na slobodu veroispovesti u školi, (Right of children to religious freedom in the school), Anali Pravnog fakulteta u Beogradu, br. 1–4/2001, pp. 511–525

3 See Avramovic, S., op. cit. pp. 46–47.

general public. So that I am not reproached for giving „unfounded value judgements“, I offer the reader the following thematically selected standpoints of the Serbian Orthodox Church, as an illustration of the preaching’s of the most significant and influential religious community in Serbia:

a) On abortion

„Contrary to feminist political slogans, the aesthetics, and the spiritual and physical reality of abortion, debase everything. It takes the form of deadly medical destruction. It ‘liberates’ women and their babies in the same way Auschwitz ‘liberated’ the Jews. It does the same thing to women as pornography does – it uses, humiliates and reduces women to the level of sexual slaves, on the one hand, and to simple ‘productive citizens’ who protect their career, on the other. This transforms the birth-giving womb into a death chamber, where the mutilated, degraded and agonized child dies silently, with cries unheard.“⁴

„Is there an analogy between Nazism and the modern pro-choice movement that favours the legalization of induced abortion? Of course there is.“⁵

b) On Western culture

„Satanic forces – political, cultural, liberal, left-winged conspiracy forces – are the leaders of the New World Order, which is undoubtedly... inspired by Satan“. The prime source of all evil is America „where there is a decline of moral and mental health.“ The whole Western culture is under the influence of „hell agents... a conspiracy against Christianity, an atheist culture“... „There will be no disturbed men walking among Serbs, who would want to infect us with this fatal disease of the Western culture. They’d better keep their progress to themselves.“⁶

c) On New Belgrade:

„New Belgrade is the paramount satanic experiment, the culmination of Communist exhibitionism... a disaster per se, a spiritual gulag, a spiritual ‘Goli otok’. City of the *new*... new city blocks, new sanctuaries, new schools, new nurseries, new shops, new student campus area, new sports hall, new free-way – for new children, new students,

4 See Abortus je ubistvo – stav Crkve pravoslavne o utrobnom čedomorstvu, EUO Eparhije žičke, 2000, pp. 14–15.

5 See Pravoslavlje, February 15, 2006, www.pravoslavlje.org.yu.

6 See Pravoslavlje, July 1, 2002, acc. to Popović-Obradović, O., Crkva, nacija država – Srpska pravoslavna crkva i tranzicija u Srbiji, Između autoritarizma i demokratije, book II, Belgrade, 2004, p. 139.

new people. A city in the desert, a city without churches, without history, a city of infidels, of the un-baptized, denationalized Serbs, a city of dead souls, of future 'Aryans'... a city where evil has been elevated to its greatest heights."⁷

d) On Orthodox upbringing of girls:

„The Orthodox girl is prepared from early childhood to become a housewife together with her mother, she serves the members of the household through her daily 'womanly' duties, well aware that her brothers' needs always come first. Her mother trustfully reveals to her that the pains of labour are the punishment for feminine sin and therefore something she should submit to... She tells her that women go through periods of uncleanness, which the Church considers a matter of utmost importance, and that her period is a feminine weakness and a human imperfection, which she must never talk about, since the very mention of it is in itself a sin... The mother also instructs her daughter how sinful thoughts that accompany falling in love must be confessed and that every sexual intercourse, including the marital one, is the greatest of sins, unless its aim is procreation. Sex education is the devil's invention; hence women have to give birth to as many children as they can as per God's wishes, thus expressing their patriotism."⁸

e) On religion in schools:

„The claim that „religious faith represents an individual's private orientation“ and the „fear that introducing religious education into school curriculum... threatens to make church dogma the foundation of moral education“, represents, in fact, the fear of Satan and his followers have had for six decades – manifested everywhere under the sky of the entire Earth, which only in its name represented everything that the notion of Serbia generally stands for.“⁹

„As long as there is religious instruction, the apish shamelessness and satanic immorality will not be able to rein over human self-consciousness and become the measure of humanity and human dignity.“¹⁰

7 See Pravoslavlje, February 1, 2001, acc.to journal Danas, April 11, 2003, p. 17.

8 See Šta treba da zna svaka pravoslavna devojčica, The Archbishopric of Montenegro, 2000, acc. to weekly Vreme, June 28, 2001, p. 36.

9 See Novosti, Informative service of the Serbian Orthodox Church, November 24, 2000.

10 See Pravoslavlje, September 1, 2005, www.pravoslavlje.org.yu.

f) On atheist parents:

(Atheist parents)...“have thrust their own offspring onto roads of false happiness and pseudo freedom“... „they have ruined the lives of their children“...¹¹

g) On reformation:

„Men keep talking about social reformation, attempting to create a ‘new man’. By founding their reforms on the alteration of banal things and superficial adaptation to the animus of this century...they themselves become captives of nothingness and transience.“¹²

Is there really a need for more examples? Would you want your child to be taught about these issues as a part of religious instruction? Are such arguments of the Church founded on love and tolerance, do they project a faithful image of reality, are they based on scientific knowledge and the experience of human existence? Do these arguments serve as a means of educating children as free and autonomous individuals? I think not. For the purpose of comparison, the Convention on the Rights of the Child proclaims that the child should be raised according to the ideals comprised in the Charter of the United Nations, especially in the spirit of peace, dignity, tolerance, freedom, equality and solidarity.¹³

1. SEPARATION OF THE CHURCH AND STATE

Professor Avramovic, in his text, under the same title, informs us that the constitutional principle on the separation of the Church and State does not have the same connotation as we always believed it had – separation of the domain of the State from the Church domain; neutrality of the State concerning religious issues; independence, autonomy and equal treatment of different religious beliefs; and most of all, restrictions on direct interference of religious communities in public life – but that in fact, the modern definition of the French term *laïcité* means more than the mere notion of the separation of the Church and State. He backs up this interpretation by referring to two French professors, who have written two books relating to the controversies that have appeared in relation to the concept of *laïcité* in France, as well as the lecture of a third professor,

11 Christmas Epistle of Patriarch Pavle for 2002, acc. to journal Danas, January 12–13, 2002, p. 15.

12 Easter Epistle of Patriarch Pavle for 2003, acc. to journal Danas, April 29, 2003, p. 3.

13 See Preamble to the Convention on the Rights of the Child (Official gazette of SFRY – International contracts, no. 15/1990).

who draws the concept of *laïcité* down to two basic principles: the non-acceptance of any religion as the official religion and the guarantee of freedom of conscience.¹⁴ From that he draws the conclusion that „having proclaimed the separation of Church and State, European legal systems regularly do not conceive a vast gap between the two, and an impossibility to perform common tasks and functions, nor does it assume absolute lack of any relation“; the examples that support this view can be seen in American practice (the proverb „*In God we trust*“ imprinted on the dollar bill, the text of the American national anthem, taking religious oath on the Bible, etc.)

It is undisputable that in comparative law and practice there are various ways to organize the relation between Church and State, and that all of them – with understandable conditionality as a result of this separation – can be divided into two main categories.

The first group includes countries within which there is a more or less close connection between the State and Religion, however that relation may take on the form of either subordination or coordination.

The subordination model has two sub-models: when the Church is subordinated to the State (this can be seen in the relation between the English Crown and the Parliament over the question of internal issues of the Anglican church), or when the State is subordinated to a certain religion or religious faith (for example, the State of Vatican, which is under the rule of the Roman Pope; Polythea on Mount Athos, led by Orthodox monks; post-revolutionary Iran, mostly under the authority of Shiite religious leaders, etc.)¹⁵

On the other hand, the model of coordination introduces different forms of cooperation between the Church and the State (mono-confessionalism in Italy, for example), i.e. between the State and two churches (bi-confessionalism, developed in countries like Germany or Switzerland, where confessional conflicts are settled). Multi-confessionalism, at last, treats all religions in the same way and is considered the main guarantee of the freedom of religious faith.¹⁶ However, multi-confessionalism, as a rule, tends towards complete separation of Church and State, but also towards the recognition and acceptance of the role that religion occupies in social life. Therefore, it can be argued that examples of religious

14 See Avramovic, S., *op.cit.*, p. 48, foot note no. 5.

15 For detail, see Margiotta Broglio, F., *Il fenomeno religioso nel sistema giuridico dell'Unione Europea*, Bologna, 1997, pp. 115–116.

16 Moreover, Voltair regarded multi-confessionalism as freedom itself: „If there were one religion, its despotism would be terrible; if there were only two, they would destroy each other; but there are many, and therefore they live in peace and happiness. „*Acc. to Willaime J-P., Etat, religion et éducation*, Paris, 1990, p. 142.

symbolism in American culture, mentioned by Professor Avramovic, are proof that religion plays an important role in American society, but do not imply that the US are abandoning the pure *laïcité* principle when it comes to the relationship they have with many religious communities that function autonomously and independently.¹⁷

The relationship between the church and the state can be regulated in three different ways:

a) Through a concordance system (Austria, Germany, Italy, Malta, Portugal, Spain and the French provinces of Alsace and Lorraine¹⁸), where the issue of religious education is resolved by one or more settlements with religious communities (for example, in Italy we have optional confessional religious education, with the study of ethics as an alternative subject; in Germany, the constitution foresees confessionalist religious instruction as part of the school curriculum¹⁹, except in the province of Bremen and the city of Berlin, where students have the right to choose an alternative non-confessional subject; in Austria, religious education is an obligatory confessional subject, performed according to a special agreement with the Catholic church, etc.);

b) By defining a state church (for example, the Anglican tradition in Great Britain, where religious education is performed as non-confessional by teachers in schools; by 1997. Norway had Lutheran religious instruction with alternative confessional teaching in some other religion or a non-confessional teaching on theology and ethics. However, follo-

17 We can get examples, proving that this is the case, from the practice of the Supreme Court of the United States. There was a case where the court made a judgment that Champaign school had not followed the regulations on the separation of Church and State, for it allowed religious teaching (Protestant, Catholic or Jewish) in a public school. „The use of public buildings for spreading religious doctrines“ was marked as an „act that leads to the disappearance of the separation of Church and State“. The court, however, judged that having non-confessional religious instruction in public schools was in accordance with this principle. See *McColum v. Board of Education*, 333 U.S., p. 212, (1948). In another judgement, a law which provided students with the right to an organized minute of silence at the beginning of every school day – which they could use for a silent, prayer or meditation – was banished as anti-constitutional and pro-religious. See *Wallace v. Jaffree*, 466 U.S., p. 924, (1984). Again, in a third judgement, the court stated that: „It is not blasphemy or anti-religious behaviour to say that no public entity in this country can write or authorize an official prayer: this solely religious function must be given upon those individuals people address when in need of religious guidance“. See *Engel v. Vitale*, 370 U.S., p. 435, (1962). Acc. to Kodolja, Z., *Laic school*, Belgrade, 2002, p. 308.

18 When France passed the famous Law on the Separation of the Church and State (*La loi de séparation de l’Eglise et de l’Etat*) in 1905, Alsace and Lorraine did not belong to France, which meant that the old German laws remained, according to which religious instruction in public schools was allowed.

19 See Article 7, item 3, Basic Law for the Federal Republic of Germany

wing school reform in 1997, there remained only one non-confessional – confessional subject. In Denmark, teachers of religious education teach a non-confessional subject; the same is in Sweden, where there is one non-confessional subject on theology and religious ethics.);

c) By defining a confessional state (Greece is a country where the bond between State and Church are very tight and religious instruction is confessional, without the possibility of choosing an alternative subject).²⁰

This other group is represented by States which are separated from the Church, in the sense that both institutions are completely independent from one another and have clearly defined jurisdiction (France, USA and Slovenia). In these countries, separation is thoroughly carried out, which leaves no option for religious instruction or confessional teaching of a certain religion.²¹

This relatively abstract presentation of various solutions for the relation between State and Church shows that the separation of the two is not a universally accepted principle, as well as that their relation in countries that proclaim the principle of *laïcité* may have many and various shapes. This was never a subject of dispute and the principle was never regarded as confrontation, or as state's negligence of the Church and everything that has to do with religion in general. My sole intention was to prove that formal existence of a relation between certain States and certain religions should not be classified as a system of separation of the Church and the State, regardless of the fact that these institutions are completely independent from each other and have clearly defined jurisdictions. They do cooperate on some issues (the very issue of religious instruction in public schools, for example), even though they do not belong to the category of state church or confessional state. My opinion on this is not a bad one, on the contrary, I think that Serbia should be compared with countries which completely and consistently implement the constitutional principle on the separation of the State and religious communities (France, USA and Slovenia) and not with countries where obligatory religious instruction of the confessional type is guaranteed by the Constitution (Germany, Belgium, Lichtenstein), or those where the Catholic church has great influence in planning and implementation of confessional teaching (Italy, Austria), regardless of the fact that these

20 For detail, see Kodelja, Z, op.cit., pp. 296–300.

21 These separations are not faultless, as we can see in the example of Holland, where the separation of church and state is conducted less obviously than in France and US. In Holland there is no confessional religious instruction in public schools, however, theology is included in the regular primary school curriculum, while studying of the Bible and spiritual life can also be included in the curriculum of high schools. Finally, religious instruction can be organized on school premises, but only outside normal school hours. Ibid.

countries directly refer to the principle of *laïcité* in their relation to churches.²²

2. THE RIGHT TO NON-DISCLOSURE OF RELIGIOUS CONVICTION

The right to privacy, i.e. the claim that no individual can be forced to disclose personal thoughts and convictions, is no whim of the *human rights* ‘extremists’, as Professor Avramovic states (the quotation marks are supposed to soften the sharpness of the term?), but a collective term used to recognize several seemingly heterogeneous rights (an individual’s right to private and family life, right to sanctity of the home and correspondence, right to physical and moral integrity) which have become a natural segment of all international human rights conventions. By no means can it be said that such disclosure is the same as „opting for one language or another“, or that „a similar problem is encountered when it comes to declaring ones religious belief in the census.“²³ The first is the case of revealing something that under no circumstances can be considered an element of the right to privacy (the way this right is defined in international conventions and interpreted in judicial judgements and doctrine), while facts considering an individual’s religious convictions are protected by absolute secrecy of collected data, which is the essence of privacy safeguard, therefore this does not represent ‘disclosure’.

On the other hand, the fact that the European Court of Human Rights was never challenged to evaluate whether the duty of citizens to declare themselves on the matters of their private thoughts and convictions, within the context we are considering (opting for a religious or an alternative teaching in schools), represents a violation of the right to privacy or not, does not exclude the possibility that such an interpretation may occur in the future. Particularly, this court has showed cases of important exemptions in the interpretation of the European Convention

22 In that sense, professor Avramovic’s reference to the organization of teaching in French primary schools, where one free day (excluding Sunday) is organized for religious education provided to the students’ by their parents, is no argument in favour of the claim that even the most secular countries in the world organize religious instruction. On the contrary, the existence of this free day is an argument that shows the importance they give in France to the principle of separation of Church and State. The confirmation of the need for religious education is something else; this need is completely legitimate and, thus, undisputable, but not within the school building. Precisely because of that, public schools make this final effort in organizing the school calendar, so that everyone could have enough free time to attend to religious education one day per week (on a Wednesday or a Saturday). Cf. Avramovic, S., op. cit, p. 51.

23 See Avramovic, S., op. cit, p. 51.

on Human Rights, while never being accused of ‘extremism’.²⁴ Since the European Court of Human Rights had not declared an opinion on the subject, the UN Committee on the Rights of the Child stated that a system which allows the child to be withdrawn from religious instruction in school, thus forcing the child to expose its religious beliefs, can represent a violation of the child’s right to privacy.²⁵

3. PROHIBITION OF IMPOSING RELIGIOUS CONVICTION

An interpretation of Article 18 of the International Covenant on Civil and Political Rights, which has already been given by a competent international body, such as is the Committee for Human Rights of the United Nations, shows the accepted viewpoint to be „...imposing of religion and belief is not allowed“ and that „religious instruction in public schools may only relate to the subjects such as general history of religion and religious ethics, under the condition that they be taught in a neutral and objective manner.“ This part of the General Comment on Article 18 of the International Covenant on Civil and Political Rights is omitted by Prof. Avramovic, however he does reproach me for the fact that I did not literally translate the text which follows: *The Committee notes that public education that includes instruction in a particular religion or belief is inconsistent with article 18.4...* (underlined by M.D.)“ . My translation, which states: ... „(The Committee is of opinion) ... that instruction of a particular religion or belief is inconsistent with the right to freedom of religion as it is defined in Article 18.4 of the International Covenant on Civil and Political Rights..... (underlined by M.D.)“ and the translation given by Prof. Avramovic: „The Committee is of opinion that public education which includes instruction in a particular religion or belief is not in accordance with Article 18.4... (underlined by M.D.); differ, in my opinion, only in style, but not in their basic meaning.²⁶ Therefore, the

24 While we are waiting for a declaration from the European Court of Human Rights, I will present you with an authentic story from everyday life. A cousin of mine, who lives in a multi-national environment, gave me his account of the disclosure of religious education in his son’s school: ‘Parents were standing in line to give a written statement regarding religious education. I noticed that all of the parents who were members of religious minorities were holding the paper folded, while the ones from the majority who were applying for religious classes were holding the paper freely and opened’. I will leave all commentaries to readers.

25 See UN Doc CRC/C/15/Add. 23, par. 9.

26 In that same sense, and for the sole purpose of shortening the original text so as to allow for simpler examination of the specific issue which is at hand, there exist differences in style –but not in meaning– in further text of this citation as well. See Avramovic, S., op. cit, p 52 and Draskic, op. cit. p.514.

undoubted intention of the aforementioned interpretation which originates from the Committee for Human Rights is in the fact to draw the line between instruction on a particular religion („religion or belief“ in other words „religious instruction for particular religion or beliefs“) and instruction on religions in general, on history of religion and religious ethics, which the committee clearly underlines in the first part of the cited viewpoint. In other words, imposing religious conviction is incongruous with the right to freedom of religion, unless „non-discriminatory exemptions or alternatives that would accommodate the wishes of parents and guardians“ are made available for those who are opposed.²⁷

This brings us to the key element in this debate, and that is the question pertaining to the content that will be included in the instruction of a particular religion or belief, and in turn what values will children gain thru such instruction for the most part in most grades in Serbian schools. If we recall the citations given at the beginning of the text, I am afraid that we will not be able to conclude that Orthodox boys and girls shall be educated in the spirit of the values which are of universal character today, such as love, peace, equality, dignity, tolerance, respect for others and those that are different, solidarity.... The values promoted by the Serbian Orthodox Church on the contrary, are almost always fraught with anti-westernism, xenophobia, high intolerance, and even aggression. It is precisely for this reason– that I remain of the same opinion– that instead of religious instruction, children at public schools should be taught a subject which shall in a neutral in values, rational and critical manner acquaint the pupils with the general history of all religions and religious ethics. Such a subject would be formed by the Ministry of Education, forming a teaching plan and program, selecting text books and religious teachers who are qualified educators, and not official representatives of the religious community. This type of instruction would be attended by all pupils, regardless of their religion or if they have their own religious convictions. This type of well organized and prepared modern instruction on religion and spirituality, on their universal and eternal values, on their influence on history and art, on the development of personality and society would be most welcome. Taking into considera-

27 See Avramovic, S., op.cit. p.52. However, the question can be raised as to whether the solution offered by the domestic law can be considered as falling within the frameworks of „non-discriminatory exemptions or alternatives“, seeing as the alternative is not the complete exemption from religion (that was treated as an „elective“ in the Decree of the Government of the Republic of Serbia) but only a choice between religion and civic education (that are designated as „electives“ in the legal texts). Compare the Decree on the organization and implementation of religious instruction and instruction of the alternative subject in elementary and secondary schools (Official Gazette of the Republic of Serbia, no. 46/2001) and the Law on the amendments to the Law on Elementary Schools Official, Gazette of the Republic of Serbia, no. 22/2002) and Law on Secondary Schools (Official Gazette of the Republic of Serbia, no. 23/2002).

tion, above all the character of our civilization, I think we can easily agree that objective and pluralistically intoned knowledge of the three monotheistic religions is necessary for understanding of philosophy, history, literature, painting, architecture and many other areas of human creativity and world tradition, and that they are all therefore a part of the general culture and civilization.

The second question initiated by Prof. Avramovic in this section of his text, pertains to my statement that throughout the last 56 years Yugoslavia was a secular State, and that during that time there was no religious instruction in public schools, and that introduction of religious instruction by way of a unexpected and at that moment illegitimate Act of the Government of the Republic of Serbia in 2001 represents an „imposition of religion“, in a way such as it was described by the Committee for Human Rights of the United Nations in the General Comment of Article 18 of the International Covenant on Civil and Political Rights.²⁸

28 Namely, it is extremely obvious that the Decree was flagrantly illegitimate at the time when it was adopted, and for the following reasons:

One, according to Article 20 of the Law on Elementary Schools and Article 24, Para 1 of the Law on High Schools the Minister of Education had exclusive competence to adopt teaching plan and programs, while according to Article 5, Para 2 of the Decree it was foreseen that the teaching plan and program for religious instruction be adopted with the mutual consent of the Minister of Education and Minister of Religion, on the jointly agreed upon proposal of traditional Churches and religious communities;

Two, according to Article 23 of the Law on Elementary Schools and Article 25 of the Law on High Schools the Minister of Education also had exclusive competence to approve the textbooks to be used, while according to Article 7, Para 1 of the Decree it was foreseen that the textbooks for religious instruction be approved by the Minister of Education at the jointly agreed upon proposal of traditional Churches and religious communities;

Three, according to Article 46, Para 5 of the Law on Elementary Schools and Article 48, Para 7 of the Law on High Schools exclusive competence for establishing the criteria and grading system is held by the Minister of Education, while in Article 11, Para 3 of the Decree that right is given to the Minister of Education, but only after he receives a joint proposal of the Minister of Religion and traditional Churches and religious communities;

Four, according to Article 67, Para 3 of the Law on Elementary Schools and Article 70, Para 7 of the Law on High School exclusive competence for establishing the level and type of educational background and qualifications of the instructors is held – once again – by the Minister of Education, while according to Article 8, item 2 of the Decree the Minister could only decide based upon the joint proposal of the Minister of Religion and traditional Churches and religious communities;

Fifth, according to Article 79, item 1 of the Law on Elementary Schools and Article 73, Para 1 of the Law on High School the instructor was selected by the director of the school based on a vacancy, whereas according to Article 8, Para 3 of the Decree the list of instructors for religious instruction was established by the Minister of Education at the proposal of traditional Churches and religious communities;

Prof. Avramovic supports his opinion with the argument that the „absence of religious instruction during the many decades of communist regime cannot be easily put in conformance with the general principles of justice and equity“ and that „coercive deprivation of certain rights, particularly one through which one of the basic human rights are manifested – right to religious freedom, shall in no way be allowed to be legalized by the democratic state.“²⁹ Such an argument however, represents a classical inversion of arguments, seeing as that strict adherence to the principle of separation of the Church and State is not a „discovery“ of communism, as was seen in the brief review of the various models of the relations between the State and religious communities in the world. Correct, of course is the fact, that believers during the communist regime were subjected to various type of discrimination (similar, after all, to other citizens who protested the governing authoritative system of thought), and that, even though the Constitution guarantees the freedom of religion, practicing of this human right in reality was shadowed by various, some smaller and some bigger obstacles.³⁰ Following the fall of the authoritative regime, on the contrary, there was no longer such obstacles and abuse. No longer are confessional communities prevented from organizing religious instruction at their own discretion, nor is there any danger of anyone banishing the believers who attend such instruction and in that way freely express their religious convictions – but outside the domain regulated by public law, to which the State and the public school system belong. Therefore, discontinuation of the secular State should not be pronounced a basic human right, because of the fact that freedom of religion and legal protection of all religions are the fundamental principles of all democratic secular States, nor can it be claimed that with religious ideologization of the State the injustice which was brought down on the believers during communism could be set straight! Any analogy with nationalization/denationalization of property is therefore completely inappropriate,³¹ because the expropriated property could be returned to a certain extent, unlike the right to the freedom of religion,

Sixth, descriptive evaluation for religious instruction, established by Article 11, Para 1 of the Decree, was not recognized by the Law on High School. Compare the Decree on organizing and implementing religious instruction and instruction of alternative subjects in elementary and high schools (The Official Gazette of the Republic of Serbia, no. 46/2001), the Law on Elementary School (The Official Gazette of the Republic of Serbia, no.50/1992) and the Law on High School (The Official Gazette of the Republic of Serbia, no. 50/1992).

29 See Avramovic, S., op. cit, p. 52.

30 Truth be told, it should be said that those obstacles had decreased throughout the years and that they were never implemented with the same ardor in Slovenia and Croatia, as was the case in Serbia and Montenegro.

31 See Avramovic, S., op. cit, p. 52.

whose limitation at one time can in no way be compensated with the rejection of the constitutional principle on the separation of the Church and the State. After all, if there is anything by which the communist regime was similar to modern democratic institutions of a liberal State, that it is surely consistent perseverance on the valuably neutral relation toward different religious determinations of its citizens.

Finally, in reference to the statistical data relating to the number of believers in Serbia, the difference established by Prof. Avramovic is the result of the fact that I used the data from the Federal Bureau for Statistics, Population Census from 1991, which showed an estimate of the number of Albanians in Kosovo as residents of Serbia, whereas Prof. Avramovic uses the data on religion from the same census, however he obviously does not include Albanians from Kosovo.³² Regardless of whether there are 80% (of those who are of Orthodox faith) or 66% (if we include the Albanian population), there is one other thing which is important here. Namely, at the time of the official population census, people are inclined to reply immediately to the question on their religious conviction with Orthodox, Catholic or Muslim,³³ even if they do not practice the religion, or they do so only in exceptional cases, traditionally, and not because they are really believers. For example, according to one study carried out by the agency „Faktor plus“, only 7.1% of those questioned answered that they regularly go to Church, 40.3% that they go to Church only on major holidays, and 45.6% that they never go to Church. When asked if they believe in God, 38.6% of the population of Serbia answered that they do not, 39.8% replied that they „think they believe“ and only 21.6% are certain that they believe in God.³⁴ The question of actual religiousness of the population of one State therefore must be observed by cross-referencing a number of various types of information.

On the other hand, a similar conclusion can be drawn from official data as well on the number of children which attend religious classes at Serbian schools. Namely, according to one such statistic for 2003, the number of children in elementary schools which choose religious instruction in the first year that the Decree of the Government of the Republic of Serbia (when religious instruction was an „optional“ subject, which means that parents could choose for their children to attend religious classes or an alternative class, or neither), totalled 30,876. In the

32 The statistical almanac which I used gives an estimate of 1,647,000 Albanians, while in the data given by Prof. Avramovic the number of Islamic believers totals only 468,713. Compare Draskic, M., *op.cit.*, p. 514 and Avramovic, S., *op.cit.* p. 53.

33 There is no more than 2% of the population in total that belongs to other religions, 1.95% declare themselves as being atheists, and 5.25% gave no reply. *Ibid.*

34 See Daily newspaper „Politika“, 6–7 January 2004, p. A8.

following year, (when religious instruction became an „elective“, and parents had to choose only between religious instruction and civic education) that number rose to 43,764 students (an increase of 41.7%). If that is not „imposing religious conviction“, then it is like I have said nothing! On the other hand, this data also shows that of the total number of students enrolled in elementary schools in Serbia (50,299), which chose one of the two subjects in the first year that religious instruction was offered, 61.4% chose religious instruction (30,876), and 38.6% the alternative subject (19,423). In the following year, of the total number of first grade students enrolled in all elementary schools in Serbia (75,210), the number that chose religious instruction totalled 58.2% or 43,764, and 41.8% or 31,446 for civic education.³⁵ This data attests the fact that the number of students that opt for religious instruction (and which, I suppose, assumed to be religious) did not significantly exceed 60% in any of the observed years.

4. THE RIGHT OF PARENTS TO ENSURE THE RELIGIOUS EDUCATION OF THEIR CHILDREN IN ACCORDANCE WITH THEIR OWN RELIGIOUS AND PHILOSOPHICAL CONVICTIONS

The right of parents to provide for their children religious and moral education, according to their own beliefs, i.e. the obligation of the member states of major international human rights conventions to respect this right, cannot be interpreted the way it is done by Professor Avramovic, so that the „State has the obligation, and parents, as taxpayers, have the right to have their children receive an education in accordance with their own religious and philosophical beliefs, within the public schooling system. Taxpayers, who pay for their children’s education, are not obliged to secure religious and philosophical (ethical) education for their children apart from their regular schooling, to pay for it separately or to non-expertly educate their children themselves.“³⁶ Such a ‘supplement’ to what is stated in certain provisions of international conventions has no ground, whatsoever, in international law. Primarily, this is the result of a

³⁵ The difference is more drastic when the data for particular regions are reviewed. For example, in the Rasina region 179 students chose religious instruction in the first year, and in the following a total of 1,526; in Belgrade in the first year 597 students chose religious instruction, and in the following 5,343 of them, etc. Similar is the data pertaining to high school students. In the first year, the number of students which selected religious instruction was 7,525, and in the following year that number was 33,633. See report of the Ministry of Education and Sports of the Government of the Republic of Serbia from June 23, 2003.

³⁶ See Avramovic, S., op. cit. p. 57.

linguistical interpretation of these provisions, whence there is no mention of the state's obligation to organize „an education in accordance with the parents' religious and philosophical convictions“, but only the fact that the State has to „respect the right of parents to provide religious and philosophical education for their children according to their own religious and philosophical beliefs.“³⁷ In complete opposition to what Professor Avramovic is saying, this is not about the duty of the State to organize religious instruction, rather about its obligation to respect the right of parents to provide a religious education for their children according to their religious and philosophical beliefs. There is an enormous difference in meaning; therefore I advise Professor Avramovic to read legal texts more carefully.

The way in which parents provide an education for their child according to their religious beliefs is not subject to International Law; they might find religious education in public schools satisfying, hence they will regard their right satisfactorily safeguarded. However, the main point in understanding this particular provision of International Law is that this provision must never be interpreted as the state's obligation to go forth in meeting parents' demands in this situation. The state has a discretionary authorization to create its own educational content, according to certain general and commonly accepted values, which it wants to promote in the educational process. To say that the state is in a purely dependent position where „taxpayers can ask for the kind of school they want“³⁸ is rather frivolous. In other words, and as I have already stated, the point of this provision is not that member states of an international convention are obliged to provide a religious education for children which is in accordance with their parents' beliefs, but to respect the right which says that the State cannot enforce an education which is not in accordance with religious and philosophical beliefs of parents. Furthermore, a document which includes the preparation of the International Covenant on Civil and Political Rights, states that Article 18, para. 4 „only forces upon member states the obligation to respect any demands by parents; it does not force upon member states that they provide religious education according to particular needs of parents“.³⁹

37 See Article. 2. of the First Protocol of the European Convention on Human Rights and Article 18. para. 4 of the International Covenant on Civil and Political Rights.

38 This opinion was confirmed in the practice of the European Court of Human Rights. Namely, the parents of an English boy with dyslexia could not prove that their right stated in Article 2 of the First Protocol was violated, when the local school board, against their will, sent the child to a special needs' school, although the parents considered that it would be better to send the child to a regular school. See *Simpson v. UK*, No. 14/668/89, December 4, 1989. Also see *PD & LD v. UK*, No. 14135/88, December 2, 1989.

39 See UN Doc A/C 3/SR 1024. All major authorities in the area of International Law on Children's Rights share this opinion. See, e.g. Van Bueren, G; International Law

On the other hand, in the practice of the European Court of Human Rights, which was called upon on several occasions for the purpose of interpreting Article 2 of the First Protocol of the European Convention on Human Rights, there was always the case that ‘the State, when fulfilling its function within the education system, has to provide „an objective, critical and pluralistic way of passing knowledge included in the school curriculum“ and that ‘states are forbidden to use education as a means of indoctrination that does not respect religious and philosophical beliefs of parents.’⁴⁰ Moreover, there was the question of a subject introduced into schools in Denmark titled ‘sex education’ and whether it violated the right of parents regulated by Article 2 of the First Protocol of the European Convention on Human Rights. First, the Court repeated that the State has to provide an objective, critical and pluralistic way of passing knowledge included in school curriculum, and then it continued with a detailed analysis of the sex education program in Danish primary schools, coming to a conclusion that the concept of the subject is such that it provides explanation to children that ‘is regarded useful’... that the aim of this subject is to help children avoid insecurity and anxiety regarding sex issues, promote understanding of the correlation between sex life, love life and love relationships in general“.... to „help students find a particular way of individual sexual experience which is in harmony with his or her personality’... to ‘put an emphasis on the importance of sex issues“...⁴¹ etc. I cannot help wondering what would be the results of such an analysis regarding ‘objectivity, criticism and pluralism’ with the opinions I cited at the beginning of this text, stated by the Serbian Orthodox Church?

5. THE RIGHT OF THE CHILD TO FREEDOM OF THOUGHT, CONSCIENCE AND RELIGION

In the section with this title, Professor Avramovic objects that: ‘Nevertheless, in this context there is an emphasis on the right of a child to form religious beliefs which are contrary to those of its parents, which undoubtedly results from international standards, with the statement that religious education is a barrier toward the effectuation of this right and,

on the Rights of the Child, The Hague, 1998, p. 159, Kilkelly, U., *The Child and the European Convention on Human Rights*, Dartmouth, 1999, p. 64–67.

40 See *Campbell and Cosans v. UK*, No. 7511/76 and 7743/76, January 29, 1982 and February 21, 1983.

41 See *Kjeldsen, Busk Madsen and Pedersen v. Denmark*, No. 5093/71, 5920/72 and 5926/72, November 5, 1976.

consequently, unconstitutional⁴². This kind of a standpoint I have never taken. All I wrote was my view that International Law acknowledges the child's absolute right to freedom of thought, conscience and religion, as well as the fact that this right implies the child's freedom to adopt the religious belief of its parents or a religious belief of its own, seeing that freedom of religion is inconceivable without the right of an individual to change religious beliefs. I wrote, as well, that it is common practice to place reserves on provisions about the children's right to religion; a completely different practices used by secular and religious states show that there is still no common view of how the child can exercise the right to a religious belief which is contrary to of the will of the child's parents.⁴³

Finally, I leave unattended a rather temperamental discussion on sects that Professor Avramovic is more than willing to promote, for this is a separate issue unrelated to the discussion we have led here. I cannot, however, not comment on the unacceptable 'supplement' to the meaning of an international document, once again by Professor Avramovic: „After all, European institutions sill do not recommend to its member states the passing of a law against sects, fearing that this act could threaten the religious rights of small religious groups. For this reason, as a basic model of protection against the real danger of aggressive religious groups' activities, European institutions suggest the so-called, positive measures: an increased engagement in education and informing of the young, increased financial control of religious groups and many other measures. Most importantly though, they propose, as a crucial measure, well-organized religious instruction.⁴⁴ This last sentence written by Professor Avramovic says as follows in the Report (*Nastase Report*): „*Education should be aimed at adolescents in particular, and curricula should include information on the history of important schools of thought, with due regard for the neutrality of the State*“.⁴⁵ If Professor Avramovic accepts that the cited part of the Report actually means „well-organized religious instruction“, then the two of us have drawn our opinions considerably close and this polemic, in that case, has really been worthwhile.

42 See Avramovic, S., op. cit. p. 58.

43 See Draskic, M., op. cit. p. 518–519.

44 See Avramovic, S., op. cit. p. 59.

45 See *Illegal Activities of sects*, Report by M.A. Adrian Nastase, Doc. 8373, April 13, 1999, p. 8. Also in the recommendation of the Parliament Assembly of the European Council: "The basic educational curriculum should include objective factual information which refers to the founding of religions and their main variants and the principles of comparative theology, as well as ethics, individual and social rights." See Recommendation 1178 (1992) on sects and new religious movements, February 5, 1992.