



Written Observations

*submitted to the European Court of Human Rights
as a third party in the case*

D.H. and E.H. v. Spain
(Case No. 18193/24)

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1. In response to the application to intervene filed by the European Centre of Law and Justice (ECLJ), the President of the Section granted permission to intervene as a third party. These observations fall within the framework defined by Article 44 of the Rules of the Court, and the ECLJ states that it acts independently, on its own initiative, and that it has no connection with the parties to the proceedings.
2. These observations will address four key areas concerning parental rights—and more specifically, the right of parents to educate their children in accordance with their moral and religious convictions—as well as their relationship to religious freedom:
 - I. Man as a religious being
 - II. Secularism is not neutrality
 - III. The rights and duties of Catholic parents to educate their children in the faith
 - IV. Discrimination based on religion and the limits of state intervention in family life

I. Man as a fundamentally religious being

3. Man is by nature a religious being; he is *homo religiosus*. As the only rational creature, he is capable of being aware of his nature and of his mortality while possessing the ability to conceive of eternity. The quest for the meaning of life and the destiny of humankind is a common feature of all known human civilizations, and any reflection on religious freedom must begin with this fundamental anthropological reality. The religious and spiritual dimension of human beings is not solely a cultural given; even Immanuel Kant acknowledges in *Religion within the Limits of Reason Alone* that human beings experience a “natural need” to conceive of a purpose that can justify the reason for their conduct. According to Kant: “Morality thus leads ineluctably to religion, through which it extends itself to the idea of a powerful moral Lawgiver, outside of mankind, for Whose will that is the final end (of creation), which at the same time can and ought to be man’s final end.”¹
4. As Durkheim observes, “At the foundation all systems of beliefs and of all cults there ought necessarily to be a certain number of fundamental representations or conceptions and of ritual attitudes which, in spite of the diversity of forms which they have taken, have the same objective significance and fulfil [sic] the same functions everywhere.”² This religious and spiritual dimension is not a cultural accident but a constitutive structure of the human being—of their morality, identity, and social bonds.

The religious dimension as the foundation of European civilization

5. The origin of the term *religio* has been a matter of debate since ancient times. Christian tradition, following Lactantius and Tertullian, links it to “*to connect*,” seeing in this interpretation a twofold bond: a vertical one, between humanity and the divine, and a horizontal one, between members of the same community of believers. Cicero, for his part, derived the term from *legere*, “*to gather, to collect*,” thus denoting a scrupulous, attentive, and anxious

¹ Immanuel Kant, *Religion Within the Limits of Reason Alone*, trans. Theodore M. Greene & Hoyt H. Hudson (Harper & Rows 1960), para. 5-6.

² Émile Durkheim, *The Elementary Forms of Religious Life: Book One*, trans. Joseph Ward Swain (George Allen & Unwin Ltd. 1915).

devotion to the sacred.³ Whichever interpretation is adopted, the two traditions converge: *religio* denotes a relationship that is fundamental to the human being, irreducible to the private sphere alone. This observation is of particular importance in Europe, whose cultural heritage is deeply Christian.

6. Christianity played a foundational role in forming Europe's collective ethical consciousness, a role recognized by the Council of Europe itself, whose Statute is based on the "spiritual and moral values which are the common heritage of their peoples."⁴ The claims of the philosophical movement the Age of Enlightenment and the subsequent political-philosophical currents, which all attempted to eradicate the religious dimension of humanity and replace it with reason alone, proved insufficient to satisfy the natural desire for transcendence and have systematically been shown to infringe upon fundamental rights (the Reign of Terror, communism, fascism, etc.).
7. The Court has already held that freedom of thought, conscience, and religion, is protected by Article 9 of the Convention: this freedom "is one of the foundations of a 'democratic society' within the meaning of the Convention. It is, in its religious dimension, one of the most vital elements that go to make up the identity of believers and their conception of life, but it is also a precious asset for atheists, agnostics, sceptics, and the unconcerned. The pluralism indissociable from a democratic society, which has been dearly won over the centuries, depends on it."⁵

II. The Myth of "Non-Conformist," Neutral, and Secular Education

8. The term "secular" comes from the Latin "*sæculum* (syn. *sæclum*), or *seculum*," which refers to "5. [decad.] a) the world, worldly life [...] b) paganism"⁶ and "*sæculāris*" [adjective], which refers to "2. of the world, secular, profane,"⁷ as opposed to religious. In the Catholic Church, the term "*secular* clergy" is used to refer to clergy living "in the world, in the present age," as opposed to the *regular* clergy, living religiously in seclusion from the world and according to regulations.
9. Secularism fundamentally reflects a desire to exclude the clergy and the Catholic Church or other religious communities from the public sphere. Secularism functions, therefore, as a moral choice that promotes the removal of religion from public life.

Fundamental philosophical distinction between neutrality and secularism

10. It is important to dispel a persistent myth: secularism did not arise from a desire for neutrality. It is the product of a philosophical and political movement explicitly directed against the influence of religion in society and, in particular, of the Catholic Church. This movement is geographically and temporally limited primarily to Western Europe and Latin America between the late 19th and mid-20th centuries, stemming largely from political choices rather than the spontaneous evolution of societies. The origin of secularism from political movements

³ Alain Rey, *Historical Dictionary of the French Language* (1991).

⁴ Statute of the Council of Europe, Council of Europe, 1 (1949).

⁵ *Kokkinakis v. Greece*, No. 14307/88, § 31 (May 25, 1993).

⁶ Félix Gaffiot, *Illustrated Latin-French Dictionary* (2016).

⁷ *Ibid.*

is illustrated throughout civilization: the anticlerical policies of Ferry and Buisson in France, Bismarck's *Kulturkampf* in Germany, the *Ley Calles* in Mexico,⁸ the model of radical secularization of *Batllismo* in Uruguay,⁹ *Kemalism* or *Atatürkism* in Turkey—all cases where secularism was deliberately instrumentalized as a tool to eradicate religion from the public sphere. British historian Owen Chadwick, in his seminal study *The Secularization of the European Mind in the Nineteenth Century*, establishes that secularization in Europe derived more from deliberate social and political developments than from a spontaneous evolution of mentalities,¹⁰ thus confirming that secularism, in its militant form, is not the natural product of the progress of reason, but the result of political choices.

11. Ferdinand Buisson, principal architect of the *l'école républicaine française* (the French public education system), stated as early as 1903: “The first duty of a Republic is to make republicans, and one does not make a republican the way that one makes a Catholic. To make a Catholic, it suffices to impose a ready-made truth upon him To make a republican, one must take the human being, however small and humble he may be . . . and instill in him the idea that he must think for himself, that he owes neither faith nor obedience to anyone, that it is up to him to seek the truth.”¹¹ Free, public, and secular schooling was not conceived independently of Catholic schooling; it was conceived in opposition to it as an instrument for creating a citizen free of all religious authority.
12. There is also widespread confusion between “neutrality” and “secularism” or “*laïcité*.” The Court itself illustrated this confusion in the *Lautsi* case. In its first ruling of November 3, 2009, the Chamber imposed on Member States an obligation of religious neutrality in public education.¹² In doing so, the Chamber adopted a philosophical position which is a direct legacy of the secularization movement described above: the Court demanded the removal of all crucifixes from Italian classrooms. “What is called ‘religious neutrality of society’ or ‘secularization’ is, in concrete terms, nothing other than the ‘de-Christianization’ of European culture and society. There is nothing neutral about this.”¹³
13. In its judgment on March 18, 2011, the Grand Chamber refused to infer from the Convention a general obligation to secularize the school environment, recognizing that “[t]he display of a religious symbol in public places did not exceed the margin of appreciation left to States”¹⁴ and that the States’ choices regarding the role accorded to religion must be respected provided, however, that such choices do not lead to a form of “indoctrination.”¹⁵ Thus, the Grand Chamber affirmed the Italian State’s determination of neutrality as an inclusive concept in which different philosophies coexist without any being imposed; the Chamber also affirmed

⁸ Decree adopted by Plutarco Elías Calles which banned public worship and religious instruction in order to strictly enforce the 1917 Constitution, thereby triggering the *Cristero* War.

⁹ Under the presidency of José Batlle y Ordóñez (1903–1915), Uruguay undertook a systematic secularization of the public sphere, going so far as to legislatively change the names of religious holidays in the civil calendar.

¹⁰ Owen Chadwick, *The Secularization of the European Mind in the Nineteenth Century* (Cambridge University Press 1975), 5.

¹¹ Ferdinand Buisson, *Speech at the 3rd Annual Congress of the Radical and Radical Socialist Republican Party*, unofficial translation (Marseille, October 1903).

¹² *Lautsi v. Italy*, No. 30814/06, § 56 (November 3, 2009) (Chamber judgment).

¹³ Grégor Puppinck, Article in *Osservatore Romano – Lautsi Case*, translated by author (July 19, 2010), 2.

¹⁴ *Lautsi and Others v. Italy* [GC], No. 30814/06, § 38 (March 18, 2011).

¹⁵ *Ibid.*, § 47(d).

the State’s determination of secularism as an exclusive concept, which requires the elimination of all religious expression from the public sphere.¹⁶

14. The Convention’s requirement for neutrality is not the absence of religion in the public sphere but the State’s impartiality in its relations with different beliefs—whether the State itself is secular or confessional. To claim that a secular school is “neutral” is a circular argument: such a claim transmits its own values and its own anthropology.

The equality of beliefs as false neutrality

15. The Canadian philosopher Charles Taylor argues that Western secularism stems from a gradual shift toward increasingly anthropocentric forms of religion, a shift that began with the Reformation. For Taylor, “[t]he shift to secularity in this sense consists, among other things, of a move from a society where belief in God is unchallenged and indeed, unproblematic, to one in which it is understood to be one options among others, and frequently not the easiest to embrace.”¹⁷ The result is a radical pluralism that tends to merge with a normative indifference toward beliefs as if all were equally valid and as if the state were justified in disregarding such beliefs when arbitrating conflicts between them. Yet this premise is not neutral: it constitutes a specific philosophical judgment belonging precisely to the secularist paradigm which has been shown to be averse to neutrality.
16. By treating the secular school as the “default” framework among available options, the court adopts a specific philosophical position. The Convention does not authorize the State to choose among the worldviews at play; it requires the State to respect them with equal impartiality. **By making secularism the standard in the arbitration of family conflicts involving religious questions, the State does not place itself above the parties; it adopts the position of one of them.**

4

Religious relativism as a philosophical bias

This observation naturally extends to the field of education. As Professor Jorge Barrera Rojas points out, “Education is not a morally neutral process.”¹⁸ All education conveys a worldview, values, and an anthropology. To claim that education without religious reference is neutral works instead to substitute one philosophy for another without acknowledging or accepting it. By definition, *non-religious* education impoverishes children because it deliberately cuts them off from what also constitutes a cultural, social, and historical heritage.

17. To assert, as is often done in civics classes, that all “major religions” are “valid” and to treat them as if they were interchangeable paradoxically amounts to denying the intrinsic value of each one and their foundational belief systems. What Judaism holds sacred differs substantially from what Catholicism or Islam considers sacred. To grant them all equal validity or invalidity does not reflect benevolent impartiality: it purports to view the religious phenomenon with indifference or even condescension toward all beliefs.

¹⁶ *Ibid.*, §§ 41-42.

¹⁷ Charles Taylor, *The Secular Age* (Harvard University Press 2007), 3.

¹⁸ Jorge Barrera-Rojas, *Educational Adequacy: Harmonizing the Right to Education, Parents’ Rights, and Educational Freedoms under the International Covenant on Economic, Social, and Cultural Rights*, *George Washington International Law Review* vol. 55 (2024), 376.

III. The Right and Duty of Catholic Parents to Educate Their Children in the Faith

18. Parents' religious freedom is a fundamental right, the exercise of which must not become a basis for discrimination. In this regard, Canon 226 § 2 of the Code of Canon Law provides the framework: "Since they have given life to their children, parents have a **most grave obligation** and possess the right to educate them. Therefore, it is for Christian parents particularly to take care of the Christian education of their children according to the doctrine handed on by Church."¹⁹

International human rights law recognizes these parental obligations

19. International human rights law expressly recognizes the primary right of parents to educate their children in accordance with their moral and religious convictions. This right is enshrined in several instruments: Article 2 of the First Additional Protocol to the European Convention within the European system; Article 12(4) of the American Convention on Human Rights within the inter-American system; and Article 17(1) of the African Charter on Human and Peoples' Rights within the African system. These provisions recognize both the right to raise one's children and the right to choose their school and the moral and religious education they will receive. This right is further guaranteed by the International Covenant on Civil and Political Rights, Article 18 § 4 (1966), which protects the right to choose an education consistent with one's convictions, and by the International Covenant on Economic, Social and Cultural Rights, Article 13 § 3 (1966), which enshrines the freedom of school choice, including private or religious schools, in accordance with the minimum standards set by the State.
20. There is also an intrinsic link between freedom of religion and parental rights: the former reinforces the right of parents to raise and educate their children in accordance with their religious beliefs. The Court recognizes that freedom of religion includes the right to manifest one's religion within the education of one's children.²⁰ The State's subsidiary role is to assist parents in their primary role as educators, and this support cannot be limited solely to parents opting for the public system but must extend to those who wish to raise their children according to their religious convictions or to enroll them in religious schools.²¹

5

Religious freedom and the canonical framework for Catholics

21. When it comes to religious beliefs, the stakes go beyond the mere social sphere: these are vital convictions upon which, according to the faith of believers, the salvation of the soul depends. In Catholicism, the religious education of children is therefore not merely a moral issue.²² Religious education is an obligation legally structured by Church law.
22. Through baptism, individuals are incorporated into the Catholic Church and thereby acquire the rights and obligations proper to Christians.²³ Canon 849 defines baptism as the "gateway

¹⁹ Code of Canon Law 226, § 2.

²⁰ *Folgerø and Others v. Norway*, No. 15472/02 (June 29, 2007) (Grand Chamber).

²¹ Georgia du Plessis, *Parental Rights: Protecting Parents, Empowering Generations*, ADF International White Paper (2024), 30.

²² Pope Francis, *Amoris Laetitia*, § 84.

²³ See, in particular, Canon 96 of the Code of Canon Law.

to the sacraments” through which human beings are reborn as children of God and incorporated into the Church by an indelible character. Canon law further requires that parents be properly prepared before the sacrament is administered, insofar as those requesting it for their child must do so with full knowledge of its significance.²⁴ Canon 867 § 1 further imposes on parents the obligation to have their children baptized “within the first few weeks,” which attests to the importance the Church attaches to the early incorporation of the child into the community of believers.

23. The transmission and preservation of the faith are obligations of paramount importance within the Catholic Church. Such action recognizes, among the obligations and rights of the lay faithful, the general obligation to the apostolate by virtue of Baptism and Confirmation, further recognizing the right to work so that the divine message of salvation may be known and received by all people²⁵; an obligation which, according to Canon 225 § 1, is “even more compelling in those circumstances in which only through them can people hear the gospel and know Christ.”²⁶
24. More specifically, through marriage and baptism, parents are bound by the very grave obligation to educate their children and enjoy the right to do so, in the terms cited previously in canon 226 § 2. According to Professor María Elena Pimstein,²⁷ the scope of this canon consequently extends to all parents (whether or not they are married in the Church) who decide to have their children baptized; by requesting baptism, parents knowingly assume the responsibility of ensuring their children’s education in the faith. The baptized child, as a member of the Church, thus acquires the rights and duties proper to all the faithful.
25. According to Professor Pimstein, baptism is so significant that the evangelizing mission it imparts does not only concern the faithful but extends to society as a whole—which has a duty to cooperate with, respect, and support the faithful in their mission—and, in a certain way, this duty extends to parents. Several canons specify the concrete scope of this principle: Canon 793 § 1 recognizes parents’ obligation and right to educate their children, including their right to choose the means and institutions which can best provide for their children’s Catholic education. Canon 797 establishes that parents must enjoy genuine freedom in the choice of schools, a freedom that civil society must not only recognize but also guarantee through subsidies. Canon 798 specifies that parents shall entrust their children to schools where a Catholic education is provided; if that is not possible, parents are bound by the obligation to ensure that the Catholic education to which their children are entitled is provided outside of school. Canon 799 supplements this provision by asking the faithful to strive to ensure that the law governing the education of young people guarantees, within each school, a religious and moral education in accordance with the parents’ conscience.
26. With regard to “The Church’s Teaching Mission” (Book III of the Code of Canon Law), the Church explicitly outlines the educational role of parents and their responsibility to pass on the Catholic tradition to their children. Canon 774 § 2 states: “Parents above others are obliged to

²⁴ See, in particular, the Code of Canon Law 851 § 2.

²⁵ *Ibid.*, Canon 225 § 1.

²⁶ *Ibid.*

²⁷ Full Professor of Canon Law at the Pontifical Catholic University of Chile and Director of the UC Center for Law and Religion. María Elena Pimstein, “*Forgetting the Legacy of Our Parents*,” in S. SALS, P. IMBARACK, and P. de la CERDA (eds.); *Freedom of Education in Peril: Threats and Risks of the Constitutional Proposal* (Santiago, Memoria Editions 2022), 115.

form their children by word and example in faith and in the practice of Christian life; sponsors and those who take the place of parents are bound by an equal obligation.”²⁸ These are not mere moral recommendations, but genuine obligations of the faithful as baptized Catholics, the failure to fulfill which is punishable, particularly in cases where children are entrusted to the education of a non-Catholic religion.²⁹

27. These obligations must be understood in light of the Catechism of the Catholic Church, which confirms and elaborates this scope. The Catechism states that “the right and duty of parents to educate their children are primordial and inalienable;”³⁰ that parents “educate their children to fulfill God’s law” by “[s]howing themselves obedient to the will of the Father in heaven;”³¹ and that “[e]ducation in the faith by the parents should begin in the child’s earliest years.”³² The Catechism adds that parents, as those primarily responsible for their children’s education, “have the right to choose a school for [their children] which corresponds to their own convictions Public authorities have the duty of guaranteeing this parental right and of ensuring the concrete conditions for its exercise.”³³
28. Authentically living one’s religion involves assuming both its rights and its obligations. A parent who wishes to educate their child in the faith is therefore acting as a responsible adult, faithful to the demands of the religion they freely profess, without causing any harm to the minor.

Religious education as a positive factor in the best interests of the child

29. The best interests of the child must be assessed holistically, taking into account all dimensions of the child’s personality, including the religious and spiritual dimensions as expressly recognized in Article 14 of the International Convention on the Rights of the Child.
30. While the interests of parents and children regarding freedom of religion or belief are not necessarily identical, they must be interpreted as positively interdependent. This implies that the child’s freedom of religion or belief constitutes a factor to be considered in any decision concerning the child, assessed in light of the child’s developing capacities. Naturally, “[t]he exercise and application of these rights change according to the different stages of the child’s development,”³⁴ but cannot, however, justify assessing the child’s best interests without regard for *their own* religious freedom.
31. The child does indeed have his or her own religious freedom which includes the right to receive religious instruction, to belong to a faith community, and to develop a spiritual identity. Yet this right is structurally absent from the reasoning that makes secularism the default criterion, seeming as if the only true expression of the child’s religious freedom is through protection against the believing parent’s influence. This reductive and one-sided conception does not reflect the full scope of the rights guaranteed by Article 9 of the Convention.
32. In this regard, the International Convention on the Rights of the Child offers a framework worth exploring. Article 14(1) guarantees “the right of the child to freedom of thought, conscience,

²⁸ Code of Canon Law, 774 § 2.

²⁹ See in particular Code of Canon Law, Canon 1367.

³⁰ Catechism of the Catholic Church, § 2221.

³¹ *Ibid.*, § 2222.

³² *Ibid.*, § 2226.

³³ *Ibid.*, § 2229.

³⁴ Georgia du Plessis *supra* note 21, 34.

and religion,”³⁵ while Article 12(1) enshrines the right of the child capable of discernment “to express [his or her] views freely in all matters affecting [him or her].”³⁶ These views must be taken into account in accordance with the child’s age and level of maturity. The Committee on the Rights of the Child, in its General Comment No. 12, clarified that this right imposes a strict obligation on States to ensure practical implementation, and that the child must be heard in any judicial or administrative proceedings concerning him or her.³⁷ This undoubtedly includes decisions regarding the choice of school and educational guidance.

33. Furthermore, the Committee on the Rights of the Child explicitly states right in its General Comment No. 14 (2013), para. 55. Among the factors to be taken into account in assessing a child’s identity are “national origin, religion and beliefs, cultural identity, [and] personality.”³⁸ Similarly, the Court’s case law, notably in the judgments *Neulinger and Shuruk v. Switzerland* [GC], (2010) and *T.C. v. Italy* (2022), has affirmed that the best interests of the child must be assessed by taking into account all the specific circumstances.
34. It is therefore appropriate to submit the following question to the Court: in cases of irreconcilable disagreement between two parents regarding the religious orientation of their child’s education, would not the solution that most respects the fundamental rights at stake be to consult the child themselves—to the extent permitted by their age and level of maturity—rather than to make a decision based on a principle of religious abstention imposed by public authority?
35. The child is not a passive object of religious education but a subject whose individual will is progressively recognized. When a child is able to express an opinion on his or her education, that child’s voice should be taken into account. All the more so for a baptized child who has received an initial religious education, is beginning to understand its meaning, and has a view of their own regarding the continuation of this education—a view that courts must take into consideration in accordance with Article 12 of the Convention on the Rights of the Child. **Consulting the child thus offers the threefold advantage of respecting their positive religious freedom, resolving the parental conflict in a way that places the child at the center, and limiting the State’s intervention to its appropriate role as a neutral arbiter—a subsidiary and non-discriminatory model required by the Convention.**

IV. The Limits of State Intervention in Family Life

36. On too many occasions, religious freedom has been invoked as a freedom *against* religion rather than as a freedom *of* religion. A danger exists in viewing religious freedom in this way, however, when it “leads to denying religion in the name of religious freedom [and] to defending religious freedom by socially suppressing religion.”³⁹

³⁵ Convention on the Rights of the Child, art. 14(1) (September 2, 1990).

³⁶ *Ibid*, art. 12.

³⁷ UN, Committee on the Rights of the Child, *General Comment No. 12 on the right of the child to be heard* (CRC/C/GC/12) (July 20, 2009), para. 81.

³⁸ See in particular UN, Committee on the Rights of the Child, *General Comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1)*, (CRC/C/GC/14) (May 29, 2013), para. 55.

³⁹ Grégor Puppinck, *supra* note 13, 4.

The “secularism by default” rule constitutes discrimination based on religion

37. When a court decides that secular schooling takes structural precedence over religious schooling in cases of parental disagreement, the court is not making a neutral choice between two educational options. Instead, the court establishes a normative hierarchy among beliefs in which secular considerations prevail not because they are deemed better suited to the child’s interests but because they constitute the standard by default. Adopting this reasoning paradoxically amounts to the old practice where subjects were required on principle to adopt the King’s religion.
38. Making secular schooling the default standard constitutes direct religious discrimination within the meaning of Articles 9 and 14 of the Convention in conjunction with Article 2 of Protocol No. 1 as interpreted by the Court in the judgments *Hoffmann v. Austria* (1993) and *Palau-Martinez v. France* (2003). In these cases, any custody decision influenced by a parent’s religious beliefs was found to be contrary to the Convention. Indeed, a parent who wishes to raise their child in the faith or enroll them in a religious school exercises a right expressly guaranteed by Article 2 of Protocol No. 1 and Article 9 of the Convention. Depriving parents of this right solely because the other parent does not share their beliefs treats faith as a factor that will disqualify one from parental responsibility—which is precisely the type of discrimination the Court condemned in these judgments.⁴⁰ Under this logic, the religion of the believing parent is transformed from a right to be protected to an obstacle which must be overcome.
39. The Court has consistently reiterated that parents’ freedom to raise their children does not guarantee immunity from all religious influence in the educational environment; It guarantees the absence of indoctrination.⁴¹ Since a non-believing parent remains free to convey their own worldview outside of school, exposure to a religious environment does not constitute an infringement on the child’s freedom. Treating this exposure as structurally incompatible with freedom of belief amounts to endorsing an exclusively negative conception of religious freedom, the logical consequence of which is the systematic exclusion of religion from the educational sphere—a result that is radically contrary to the pluralism which the Convention seeks to protect.

40.

Receiving religious instruction does not infringe upon freedom

41. The implicit premise of “secularism by default” treats the child’s religious freedom as freedom of protection—protecting the child from religious influence. But religious freedom also has a positive dimension: the right to receive an education, to learn, and to be able to make an informed choice.⁴² If the child has already begun to receive instruction, they have the right to be asked for their opinion and, if they wish, to continue that instruction.
42. Depriving a child of religious education so that he or she can “choose freely when they grow up” is philosophically inconsistent: one cannot accept or reject something one does not know.

⁴⁰ See, *inter alia*, *Palau-Martinez v. France*, No. 64927/01, § 39 (December 16, 2003); *Vojnity v. Hungary*, No. 29617/07, § 37 (February 12, 2013).

⁴¹ See, *inter alia*, *Folgerø and Others v. Norway* *supra* note 20, § 78, § 84(h); *Lautsi and Others v. Italy*, No. 30814/06, § 62 (March 18, 2011) (Grand Chambers opinion).

⁴² See, in particular, Article 9 of the *European Convention on Human Rights*, in conjunction with Article 5 of the *Convention on the Rights of the Child*. See also *Metropolitan Church of Bessarabia and Others v. Moldova*, No. 45701/99, § 114 (December 13, 2001); *Kokkinakis v. Greece* *supra* note 5, § 31.

Freedom of choice presupposes knowledge about the subject of that choice. A non-religious upbringing is not neutrality; it is a deprivation. Many children raised in the faith abandon it in adulthood. This shows that religious instruction does not inherently infringe upon freedom. A child raised in the faith remains free to conform their life to that instruction or to reject it.

43. Christian education does not harm a child's freedom; it enriches it. Far from promoting pluralism, depriving a child of any religious foundation deprives them of an essential part of the cultural and intellectual heritage of European civilization.

State intervention in private and family life

44. The state may legitimately intervene in private and family life only in cases of serious restrictive measures or in the event of proven and imminent danger to the child.⁴³ Outside these cases, the state's role is that of a neutral arbiter: the state settles a disagreement; it does not substitute its own values for those of the parents. Yet this neutrality is precisely what is lacking when secularism becomes the default criterion.
45. To fulfill its role as a neutral arbiter, the state must evaluate educational options based on their merits—academic quality, continuity of education, the child's well-being and identity, etc.—rather than making decisions based on ideological assumptions.

States' margin of appreciation in religious matters

46. The Court recognizes that states have a margin of appreciation in organizing their educational systems.⁴⁴ This margin is strictly bounded by two absolute limits: the prohibition of any indoctrination and the obligation of neutrality and impartiality.⁴⁵ The margin cannot extend to judicial arbitration elevating secularism to a status of superior constitutional value in family conflicts with religious dimensions.
47. As the Court has consistently affirmed, in a pluralistic democratic society, the State's duty of impartiality and neutrality is incompatible with any discretion taken regarding the legitimacy of religious beliefs or the manner in which they are expressed.⁴⁶ Article 8 of the Convention is structurally at odds with Article 2 of Protocol No. 1: we do not contend that the State lacks jurisdiction in family disputes, but that this jurisdiction must be exercised in a religiously neutral manner.
48. The state can and must act as an arbiter. By establishing secularism as the default standard, the state is not demonstrating neutrality. Doing so imposes secularism as the normative benchmark and thereby violates the very principle that the state claims to embody. The neutrality required by the Convention is not the absence of religion in the public sphere; it is equal impartiality toward all beliefs.

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⁴³ See, in particular, Council of Europe, *Social services in Europe: legislation and practice of the removal of children from their families in Council of Europe member States*, Doc. 13878 (September 24, 2015), para. 2. See also Articles 9(1), 16, 19(2), and 20 of the *Convention on the Rights of the Child*; and Article 8(2) of the *European Convention on Human Rights*.

⁴⁴ *Lautsi and Others v. Italy* supra note 41, § 62, § 69.

⁴⁵ *Folgerø and Others v. Norway* supra note 20, § 84(h).

⁴⁶ See, *inter alia*, *Hassan and Tchaouch v. Bulgaria*, No. 30985/96, § 78 (October 26, 2000) (Grand Chambers opinion); *Metropolitan Church of Bessarabia and Others v. Moldova* supra note 42, § 116; and *Magyar Keresztény Mennonita Egyház and Others v. Hungary*, No. 70945/11, § 76 (April 8, 2014).