



Strasbourg, 31 May 2012

Opinion No. 675/2012

CDL(2012)042\*  
Or. Engl.

**EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW**  
**(VENICE COMMISSION)**

**DRAFT *AMICUS CURIAE* BRIEF**

**ON**

**THE COMPATIBILITY WITH HUMAN RIGHTS STANDARDS  
OF CERTAIN ARTICLES OF THE LAW ON PRIMARY EDUCATION  
OF THE SARAJEVO CANTON**

**OF THE FEDERATION OF BOSNIA AND HERZEGOVINA**

**on the basis of comments by**

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**Mr Jean-Claude SCHOLSEM (Substitute Member, Belgium)**  
**Mr Ben VERMEULEN (Member, The Netherlands)**

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*\*This document has been classified restricted on the date of issue. Unless the Venice Commission decides otherwise, it will be declassified a year after its issue according to the rules set up in Resolution CM/Res(2001)6 on access to Council of Europe documents.*

## I. Introduction

1. The Venice Commission received a request by letter of 2 February 2012 from the President of the Constitutional Court of the Federation of Bosnia and Herzegovina to provide an *amicus curiae* opinion. The request is related to the submission by the Prime Minister of the Sarajevo Canton asking for review of the constitutionality of article 3 of the Law of Sarajevo Canton amending the Law on Primary Education, which was published in the Official Gazette of Sarajevo Canton No. 31/11.

2. The question asked is whether the wording of article 3 of the Law of Sarajevo Canton, which amended article 8 of the Law on Elementary Education, is compatible with the Constitution of Bosnia-Herzegovina and with European and international standards, in particular with articles 8 (right to private life), 9 (freedom of religion) 10 (freedom of expression) and 14 (prohibition of discrimination), and Protocol 1 article 2 (right to education) of the European Convention on Human Rights (hereinafter: ECHR), as well as with the UN Convention on the Rights of the Child of 20 November 1989<sup>1</sup> and the United Nations Convention of the Rights of persons with Disabilities of 13 December 2006<sup>2</sup>.

3. Article 8 (1) of the Law on Elementary Education as amended reads:

*"The school shall provide conditions for students to attend the religious studies, and for those students who do not attend religious studies, the school shall allow another<sup>3</sup> course on ethics and/or religion, and which curriculum is brought by the Ministry.*

*Students, with parental consent, at the beginning of the school shall opt to attend one of the courses referred to in paragraph 1 of this article, with a possibility to change that decision at the beginning of each school year.*

*The courses referred to in paragraph 1 have the status of an elective course and enter the general average of marks".*

4. Ms Finola Flanagan, Mr Jean Claude Scholsem and Mr Ben Vermeulen acted as rapporteurs in the preparation of this *amicus curiae* brief.

5. *The present draft opinion was adopted by the Venice Commission at its ... Plenary Session (Venice, ... June 2012).*

## II. Background and issues

6. The Commission has been informed that the alternative course on ethics and/or religion, called "Culture, Religion and Society", has been introduced in the 2011-2012 school year. It is described as objective and comparative and covers Islam, Christianity and Judaism. Nevertheless, the Prime Minister argues in his submission to the Constitutional Court of the Federation of Bosnia and Herzegovina that since it is about the above-mentioned religions, this course is not secular nor neutral. In the Prime Minister's view, the amended law therefore only provides for either denominational religious instruction, i.e., a religious studies course, or the ethics, and/or religion course, which is also about religion. The Ministry of Education is not free to propose any other options for parents and students who do not wish to have any education related to religion at all, or who wish only to have a secular education.

<sup>1</sup> <http://www2.ohchr.org/english/law/crc.htm>

<sup>2</sup> <http://www.un.org/disabilities/default.asp?id=150>

<sup>3</sup> The Secretariat of the Venice Commission has been informed that the term *srodnog* in the original text had been omitted from the translation of the amendment furnished in the *amicus curiae* request. According to this information, the word *srodnog* means **related/akin/similar**. Therefore, Article 8(1) of the Act on Education should read: *"The school shall provide conditions for students to attend the religious classes, and for those students who do not attend religious classes, the school will allow another related/akin/similar course on ethics and/or religion, and whose curriculum is brought by the Ministry"*

7. The main element of the issue submitted to the Venice Commission concerns therefore the fact that students, with parental consent, will have to make a choice and declare whether they wish or not to follow religious education, the alternative being "another course on ethics and/or religion". The Prime Minister of Sarajevo Canton states in his complaint that this option does not offer a real choice to those students not wanting to attend a subject related to religious studies. Families which are either atheist, not religious or of a religion other than those recognised in the curriculum (Islam, Christianity, Judaism), do not have other options (either no class at all, or a secular-neutral ethics course or a course that includes their religion). They have to choose between denominational/confessional religious classes and objective/comparative classes on three specific religions. It would appear from the figures provided concerning Sarajevo Canton that some 1700 families of children attending schools in the Canton (around 5%) have already expressed their wish not to choose either of these options.

8. Prior to its amendment Article 8 reads as follows:

*"The school is obliged to ensure conditions for the students to attend religious education classes but only under the consent of parents or guardians.  
The school must not undertake any kind of activities that could be understood as non respect or giving advantage to any religion.  
The school ensures that the student does not suffer any kind of discrimination or damage on religious bases, on the bases of not having religion, on the bases that s/he does not attend religious classes of particular religion or s/he does not attend the classes at all.  
It has been ensured that the students would study about other religions and belief systems as well as about other traditions and cultures."*

9. However, no information has been provided about how this provision had operated.

10. The Prime Minister contends in his submission to the Constitutional Court that the curriculum does not live up to the general requirements of neutrality, objectivity or pluriformity. It is understood that the Ministry of Education of Sarajevo Canton does not have a role in either teaching or in setting the curriculum of the religious studies courses, which by the law on freedom of religion of 2004 *"shall be provided solely by persons appointed to do so by an official representative of his Church or religious community."* The Ministry may only endorse the curriculum of the religious studies courses. While the Ministry does *"bring the curriculum"* for the ethics and/or religion course, according to the Prime Minister, information has been received that it must be similar or related to the religious studies courses. The Ministry therefore has no scope to determine, the subjects. This – according to the Prime Minister – is incompatible with:

- a) the freedom of religion and the freedom of education, and with the right not to be discriminated against of the ECHR;
- b) with the Convention on the Rights of Persons with Disabilities. The essence of the argument introduced by the Prime Minister is that children with disabilities are often unable to understand the meaning of religion or a related subject, as prescribed by the amended Article 8. Thereby the introduction of these subjects disables teachers, schools and Ministry to offer a content to these students that is appropriate for their specific conditions, thus hindering the inclusion of these students in the general education system and their access to general tertiary education, vocational training and education.
- c) with the Convention on the Rights of the Child, stipulating that the public authorities shall respect the child's right to freedom of thought, conscience and religion, that the education they provide must be in the best interest of the child, that it fully respects the rights and duties of parents and thus ensure the full development of the child's personality.

11. The Prime Minister objects to the amendment and proposes that for those students or their parents who consider that the “*religious studies course*” and “*ethics and/or religion course*” offered do not comply with their beliefs or interests, there should be an option not to choose either of these courses. He proposes that, as an alternative, the school should provide to these students free activities with the supervision of teachers so that these students are not discriminated against. The Prime Minister points out that this type of arrangement was what was originally proposed by the Ministry of Education and Science of Sarajevo Canton and the Government of Sarajevo Canton.

12. According to Article 8 (1) of the Act on elementary education as amended, “the school shall provide conditions for students to attend religious classes, and for those students who do not attend religious classes, the school will make possible to take another related (akin/similar) subject on *ethics and/or religion*, and whose curriculum is brought by the Ministry”. What the implications of “...and/or...” are unknown.

13. It is not for the Venice Commission to interpret Article 8 (1) of the Act in order to decide whether the Ministry has or has not the discretion to opt for an alternative, secular ethics course. But *if* the Ministry indeed has that competence, then it is implausible to conclude that this provision *as such* is incompatible with the Constitution and human rights treaties. In that case it is not the provision *as such*, but its *specific implementation* by the Ministry that has to be measured against constitutional and treaty rights. It is not for the Venice Commission, but for the national authorities - including the Constitutional Court - to decide on the question what room Article 8 (1) of the Act leaves to the Ministry to determine the content of the alternative courses. In its evaluation of Article 8 (1) of the Act, the Venice Commission *will assume* that this provision requires the Ministry to provide for an alternative course which is akin to the primary religious classes, containing a (more or less) comparative/descriptive course on particular religions, such as the current “Culture, Religion and Society” course, dealing with Islam, Christianity and Judaism.

### **III. The constitutional framework of the Federation of Bosnia and Herzegovina and international standards applicable**

#### **A. The constitutional framework**

14. The request submitted to the Venice Commission has been addressed by the President of the Constitutional Court of the Federation of Bosnia and Herzegovina and not by the Constitutional Court of Bosnia and Herzegovina. The Prime Minister of Sarajevo Canton can not address directly the Constitutional Court of Bosnia and Herzegovina, but he can access the Constitutional Court of the Federation, according to Article IV.C.10.2b of the Constitution of the Federation of Bosnia and Herzegovina.

15. The complaint of the Prime Minister of Sarajevo Canton is based on the alleged violation of Article II.A.2 (1).c), d), j) and l) of the Constitution of the Federation of Bosnia Herzegovina, which make reference to the principle of equality, non discrimination, the right to family and children rights and the freedom of thought, conscience and religion. There is no reference to the right to education in the complaint.

16. Article II.A.2 of the Constitution of the Federation establishes that “*The Federation will provide the implementation of the highest level of the internationally recognized rights and freedoms prescribed by the documents enlisted in the Annexes of the Constitution*”. Among the texts in the annex, there are the ECHR and the Convention on the Rights of the Child, but there is no reference to the Convention on the Rights of Persons with Disabilities. Therefore, the competence of the Constitutional Court of the Federation of Bosnia and Herzegovina to apply it is not clear. However, this Convention was ratified by Bosnia and Herzegovina in 2010 and remains an international obligation. According to Article II.1 of the Constitution of Bosnia and Herzegovina, “*both Entities shall ensure the highest level of internationally recognized human rights and fundamental freedoms*”.

17. Nevertheless, the competence of the Constitutional Court of the Federation of Bosnia and Herzegovina is comparable to that of the Constitutional Court of Bosnia and Herzegovina. Both can rely directly on the ECHR and its Protocols, as well as on the Convention on the rights of the Child.

## **B. The international standards**

18. The Venice Commission will assess in this *amicus curiae* brief the compatibility of the amended article 8 of the Law on Primary Education with the ECHR and will briefly comment on the relevant provisions of the Convention on the Rights of the Child and the Convention on the Rights of Persons with Disabilities.

19. In order to conduct its assessment, the Venice Commission will also rely on the international and European standards, the case-law of the European Court of Human Rights, as well as documents adopted on this topic, such as:

- The Framework Convention on the Protection of National minorities, and in particular, its article 8.
- The Guidelines for legislative reviews of laws affecting religion or belief adopted by the Venice Commission at its 59<sup>th</sup> Plenary Session (Venice, 18-19 June 2004), (CDL(2004)028).
- The OSCE/ODIHR Toledo Guiding principles on teaching about religions and beliefs in public schools, 2007.
- The UN Report of the Special Rapporteur of United Nations on the Rights to education on Bosnia and Herzegovina, 27 May 2008.

## **IV. Assessment**

### **A. Compatibility of the amended Article 8 of the Law on Elementary Education with the Convention on the Rights of Persons with Disabilities**

20. It has been submitted that the amended Article 8 (1) of the Act on elementary education violates the Convention on the Rights of Persons with Disabilities. The essence of the Prime Minister's argument is, that children with disabilities would be often unable to understand the meaning of religion and related subjects as prescribed by Article 8. Thereby the introduction of these subjects would disable teachers, schools and Ministry to offer a content to these students that is appropriate for their specific conditions. It would hinder the possibility for these students to be included in the general education system, and obstruct their access to general tertiary education, vocational training and education. Probably this argument refers to Article 24 of the said Convention, in particular sections 2 and 5, reading:

#### ***“ Article 24***

*(2) States Parties shall ensure that:*

- a. Persons with disabilities are not excluded from the general education system on the basis of disability, and that children with disabilities are not excluded from free and compulsory primary education, or from secondary education, on the basis of disability;*
- b. Persons with disabilities can access an inclusive, quality and free primary education and secondary education on an equal basis with others in the communities in which they live;*
- c. Reasonable accommodation of the individual's requirements is provided;*
- d. Persons with disabilities receive the support required, within the general education system, to facilitate their effective education;*
- e. Effective individualized support measures are provided in environments that maximize academic and social development, consistent with the goal of full inclusion.*

*[...]*

(5) *States Parties shall ensure that persons with disabilities are able to access general tertiary education, vocational training, adult education and lifelong learning without discrimination and on an equal basis with others. To this end, States Parties shall ensure that reasonable accommodation is provided to persons with disabilities.*"

21. However, it is not clear how a curriculum that leaves a free choice between religious classes and alternative courses related to religion is as such incompatible with Article 24 of this treaty, when such a choice is part of the general education system (Article 24 (2)). Nor is it clear how would make it impossible to adapt the religious and alternative classes to the specific educational needs of persons with disabilities (Article 24 (2)), or how it as such obstructs access to further education as provided in Article 24 (5). There is nothing that suggests that the requirements of students with special education needs might not be addressed in either the teaching of a religious studies course or an "ethics and/or religion" course such that there would be a failure to comply with the Convention's obligations.

### **B. Compatibility of the amended Article 8 of the Law on Elementary Education with the Convention on the Rights of the Child**

22. It has - without further substantiation - been submitted that Article 8 (1) of the Act on elementary education is in breach of the Convention on the Rights of the Child, according to which the state shall respect the child's right to freedom of thought, conscience and religion (Article 14 of this Convention), ensure that the education provided is in the best interest of the child, fully respect the rights and duties of parents and ensure the full development of the child's personality (Articles 18, 28 and 29). However, the right to education *ipso facto* presupposes state regulation (cf. Article 29 (2), last sentence). It is submitted here, that if the information and knowledge included in the curriculum is conveyed in an objective, critical and pluralistic manner in conformity with the requirements flowing from Article 2 Protocol 1 of the European Convention on Human Rights, it may – in the absence of specific arguments to the contrary - be assumed that this curriculum is compatible with the Convention on the Rights of the Child.

### **C. Compatibility of the amended Article 8 of the Law on Elementary Education with the ECHR**

23. It is also submitted that Article 8 (1) violates the European Convention on Human Rights, in particular Article 9 (freedom of religion), Article 10 (freedom of expression), Article 14 (non-discrimination) and Article 2 of Protocol No. 1 (right to and freedom of education)<sup>4</sup>. The Venice Commission can confine itself to focusing on Article 2 Protocol 1 of the Convention and the relevant case law of the European Court of Human Rights. Article 2 of Protocol No. 1 of the Convention, being the *lex specialis* in the area of education, and the case law with regard to that provision, specifically deal with the matters here at hand. Furthermore, the Court has interpreted Article 2 of Protocol no. 1 of the Convention in the light of Article 9 and 10 of the Convention (cf. EctHR, *Kjeldsen, Busk Madsen and Pedersen v. Denmark*, judgment of 7 December 1976, § 52) and has included in its reading of Article 2 of Protocol No. 1 of the Convention the relevant aspects of Article 14 of the Convention.

24. The right to education as enshrined in Article 2 of Protocol No. 1 of the Convention by its very nature calls for regulation by the State (EctHR, *Konrad v. Germany*, decision of 19 September 2006). Therefore, as the Court has ruled on several occasions (see already EctHR, *Kjeldsen, Busk Madsen and Pedersen v. Denmark*, judgment of 7 December 1976, § 53), the setting and planning of the educational curriculum fall in principle within the competence of the state. Furthermore, as the Court ruled in *Kjeldsen*:

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<sup>4</sup> Article 2 Protocol 1 reads as follows: "No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religions and philosophical convictions."

*“In particular, the second sentence of Article 2 of the Protocol (P1-2) does not prevent States from imparting through teaching or education information or knowledge of a directly or indirectly religious or philosophical kind. It does not even permit parents to object to the integration of such teaching or education in the school curriculum, for otherwise all institutionalised teaching would run the risk of proving impracticable. In fact, it seems very difficult for many subjects taught at school not to have, to a greater or lesser extent, some philosophical complexion or implications. The same is true of religious affinities if one remembers the existence of religions forming a very broad dogmatic and moral entity which has or may have answers to every question of a philosophical, cosmological or moral nature. The second sentence of Article 2 (P1-2) implies on the other hand that the State, in fulfilling the functions assumed by it in regard to education and teaching, must take care that information or knowledge included in the curriculum is conveyed in an objective, critical and pluralistic manner. The State is forbidden to pursue an aim of indoctrination that might be considered as not respecting parents’ religious and philosophical convictions. That is the limit that must not be exceeded.”*

25. The Court has summarized the principles flowing from Article 2 of Protocol No. 1 in *Folgero* (ECtHR, *Folgero and others v. Norway*, judgment of 29 June 2007, §84). In applying these principles to religious instruction, the Court concluded (§89) that

*“the second sentence of Article 2 of Protocol No. 1 does not embody any right for parents that their child be kept ignorant about religion and philosophy in their education. That being so, the fact that knowledge about Christianity represented a greater part of the [Norwegian] Curriculum for primary and lower secondary schools than knowledge about other religions and philosophies cannot, in the Court’s opinion, of its own be viewed as a departure from the principles of pluralism and objectivity amounting to indoctrination (see, mutatis mutandis, Angeleni v. Sweden, no 10491/83, Commission decision of 3 December 1986, Decisions and Reports 51). In view of the place occupied by Christianity in the national history and tradition of the respondent State, this must be regarded as falling within the respondent State’s margin of appreciation in planning and setting the curriculum”.*

26. Pluralism in education as required in a democracy has been interpreted as a prohibition against indoctrination which would not respect the religious and philosophical convictions of parents<sup>5</sup>. Therefore, information or knowledge included in the curriculum must be conveyed in an “objective, critical and pluralistic manner”<sup>6</sup>. It is acknowledged that, in view of the power of the modern state, it is above all through state teaching that this aim must be realised<sup>7</sup> and that, where a function has been assumed by the state in relation to education and teaching, it falls within the scope of the second sentence of article 2 Protocol 1. The state must respect the right of parents to ensure the education and teaching of their children in conformity with their own religious and philosophical convictions<sup>8</sup>.

27. The necessary pluralism required by the second sentence of Article 2 of Protocol 1 can be achieved where denominational religious classes are provided in a public school by permitting parents of students a choice of whether or not their children should attend such classes<sup>9</sup>. Furthermore, the ECtHR has interpreted the Convention to the effect that a state is not prohibited from requiring a student’s attendance, without the possibility of exemption, at a course on “ethics and/or religion” where the student does not attend a denominational religious course. This in itself is not incompatible with Article 2 of Protocol 1. However, such compulsory attendance at a course on “ethics and/or religion” is only compatible with ECHR where the

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<sup>5</sup> ECtHR, *Hasan and Eylem Zengin v Turkey* (2007), paragraph 52.

<sup>6</sup> *Ibid* paragraph 48.

<sup>7</sup> ECtHR, *Kjeldsen*, paragraph 50.

<sup>8</sup> ECtHR, *Lautsi and others v Italy*, 18 March 2011, paragraph 65.

<sup>9</sup> According to the *Toledo Guiding principles on teaching about religions and beliefs in public schools*, the right to “opting out” can be useful if it does not entail a stigmatisation of the students exercising it and can be used as a “safety valve” (p. 70).

“ethics and/or religion course” is neutral and does not seek to indoctrinate. It must be conveyed in an objective, critical and pluralistic manner. Such arrangements protect on the one hand the religious and philosophical convictions of parents who wish their children to attend denominational religious classes and, on the other, the religious and philosophical convictions of those who do not.

28. The Venice Commission emphasises that its view that states are allowed to set up a system of religious classes in combination with the possibility of alternative objective-comparative courses on religion must *not* be understood as implying that states are *obliged* to introduce such a system. Whether or not to allow in public schools religious instruction and objective and neutral alternative courses related to religion is a question of expediency, not of legal obligations flowing from the Convention. Member States enjoy a wide margin of appreciation in determining the steps to be taken to ensure compliance with the ECHR with due regard to the needs and resources of the community and of individuals. The setting and planning of the curriculum fall within the competence of the Member States and it is not for the ECtHR to rule on such questions as the solutions may legitimately vary according to the country and the era<sup>10</sup>. The ECtHR has noted the wide variety of approaches taken to this issue<sup>11</sup>. States, therefore, can decide to establish, as an alternative to religious courses, either a course on ethics or a course on a subject related to religion, provided that the course is neutral and does not seek to indoctrinate.

29. Whether there is no incompatibility between Article 8 and the ECHR naturally depends on the *actual* content of the alternative course. Giving effect to this requirement of neutrality in practice will require great care especially in the context of the very delicate situation which exists in Bosnia and Herzegovina. ECRI, in its Report on Bosnia and Herzegovina adopted on 7 December 2010 under the heading “*Discrimination in Various Fields – Education*”, reiterated its recommendation made in a previous report that “*...all public schools...should be organised as multicultural, multilingual, multireligious, open and inclusive schools for all children*” and underlined the need for the common core curriculum to be applied in all schools in the country<sup>12</sup>. ECRI expressed concern that children of different ethnic backgrounds continue to attend different monoethnic schools in Bosnia and Herzegovina, as well as with regard to the persistence of many cases of “two schools under one roof” where children attending the schools are segregated along ethnic lines<sup>13</sup>. These concerns were also echoed by the Council

<sup>10</sup> ECtHR, *Lautsi and Others v Italy*, paragraphs 61 and 62

<sup>11</sup> ECtHR, *Hasan and Eylem Zengin v Turkey*, paragraphs 30 – 34; “**30.** In Europe, religious education is closely tied in with secular education. Of the 46 Council of Europe member States which were examined, 43 provide religious education classes in state schools. Only Albania, France (with the exception of the Alsace and Moselle regions) and the former Yugoslav Republic of Macedonia are the exceptions to this rule. In Slovenia, non-confessional teaching is offered in the last years of state education. **31.** In 25 of the 46 member States...religious education is a compulsory subject. However, the scope of this obligation varies depending on the State. In five countries, namely Finland, Greece, Norway, Sweden and Turkey, the obligation to attend classes in religious education is absolute. All pupils who belong to the religious faith taught in the classes are obliged to follow them, partially or fully. However, ten States allow for exemptions under certain conditions. This is the case in Austria, Cyprus, Denmark, Ireland, Iceland, Liechtenstein, Malta, Monaco, San Marino and the United Kingdom. In the majority of these countries, religious education is denominational. **32.** Ten other countries give pupils the opportunity to choose a substitute lesson in place of compulsory religious education. This is the case in Germany, Belgium, Bosnia and Herzegovina, Lithuania, Luxembourg, the Netherlands, Serbia, Slovakia and Switzerland. In those countries, denominational education is included in the curriculum drawn up by the relevant ministries and pupils are obliged to attend unless they have opted for the substitute lesson proposed. **33.** In contrast, 21 member States do not oblige pupils to follow classes in religious education. Religious education is generally authorised in the school system but pupils only attend if they have made a request to that effect. This is what happens in the largest group of States: Andorra, Armenia, Azerbaijan, Bulgaria, Croatia, Spain, Estonia, Georgia, Hungary, Italy, Latvia, Moldova, Poland, Portugal, the Czech Republic, Romania, Russia and Ukraine. Finally, in a third group of States, pupils are obliged to attend a religious education or substitute class, but always have the option of attending a secular lesson. **34.** This general overview of religious education in Europe shows that, in spite of the variety of teaching methods, almost all of the member States offer at least one route by which pupils can opt out of religious education classes (by providing an exemption mechanism or the option of attending a lesson in a substitute subject, or by giving pupils the choice of whether or not to sign up to a religious studies class).” It has been observed that the rights of parents under the second sentence of Article 2 Protocol 1 does not seem realistically to be gaining weight in the balancing exercise of the proportionality test (see in this respect ECtHR, *Lautsi v. Italy*. Concurring opinion of Judge Rozakis joined by Judge Vajic).

<sup>12</sup> ECRI(2011)2 paragraph 67.

<sup>13</sup> Ibid paragraph 63



of Europe Commissioner for Human Rights<sup>14</sup> and by the UN General Assembly Human Rights Council Special Rapporteur<sup>15</sup>.

## V. Conclusions

30. Article 8 of the Law on Elementary education as amended leaves the students and their parents a choice between religious classes and an alternative course on “ethics and/or religion”.

31. Compliance with Article 2 of Protocol 1 can be achieved where denominational religious classes are provided in a public school by permitting students a choice of whether or not to attend such classes. As an alternative to the denominational religious classes, the state can establish a course either entirely devoted to religion or devoted only to ethics or to both religions and ethics.

32. A state is not prohibited from requiring a student’s attendance, without the possibility of exemption, at a course on ethics and/or religions where the student does not attend a denominational religious course. However, such compulsory attendance at a course on ethics and/or religion is only compatible with ECHR where the ethics and/or religions course is neutral and does not seek to indoctrinate. It must be conveyed in an objective, critical and pluralistic manner. Such arrangements protect on the one hand the religious and philosophical convictions of parents who wish their children to attend denominational religious classes and, on the other hand, the religious and philosophical convictions of those who do not.

33. Should the Constitutional Court of the Federation of Bosnia and Herzegovina reject the complaint submitted by the Prime Minister of the Sarajevo Canton and declare Article 8 as amended compatible with the Constitution and the European and international applicable standards, it would be important to issue some interpretation guidelines on the conditions under which the course “on ethics and/or religion”, its teaching method and its goal would fulfill the neutrality and pluralistic requirements. The Constitutional Court will have to decide whether the course is “on ethics or religion” or “on ethics and religion”. These guidelines would be useful for future legal acts implementing the Law on Elementary Education in the Sarajevo Canton.

34. The Venice Commission remains at the disposal of the authorities of Bosnia and Herzegovina for any further assistance in this matter.

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<sup>14</sup> CommDH (2008)1 paragraph 130

<sup>15</sup> A/HRC/8/10/Add.4 27 May 2008 paragraph 82