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SOME RECENT PROBLEMS WITH THE RELIGIOUS EDUCATION IN SPAIN

Susana Mosquera

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Many changes have been tried during the first government period of the Popular Party in Spain. Some of these changes have caused some discussions and conflicts inside the system, not only in the legal and political point of view. The main hostilities from the opposition were produced in relation with the plan to reform the humanities or classical studies. We can measure the meaning of this scheme of reform through the fact that the former ministry of culture was removed because of this project. Nowadays we have to affirm that the situation in Spain is a completely different one. The Popular party has reached the absolute majority in the elections that means, he does not need the co-operation from the nationalist parties to deal with the affairs of state, he can set the rules he wants without the necessary and compulsory agreement of the other political parties and parliamentary forces. With the new situation of majority for the Popular party the projects to reform this field have appeared again.

Inside this new system we found the graft of a project which tries to change the religious education in the Spanish academic organisation. Before explaining this project to reform the system we have to analyse the system itself.

First thing we have to mention is the especial consideration that the religious and moral instruction have inside our legal system,¹ according to the article 27,3 of our Constitution: “ The public authorities guarantee the right of parents to ensure that their children receive religious and moral instruction that is in accordance with their own convictions.” We could think that this a regulation wide and general enough to avoid a comparative grievance and inequality between the different confessions recognised inside our legal system. But within this general concept of religious instruction, catholic religious classes play an especial role in our educational system. Basically because education has been a particular domain of the Catholic Church during centuries. Obviously we can not exclude the Catholic Church from the educational system just with a decree establishing the civil education or the civil control over the Schools. The network system of religious educational institutions is so strong for this.²

¹ SATORRAS FIORETTI, R.M. *La libertad de enseñanza en la constitucion española*. Ed: Marcial Pons, Madrid, 1998

² Only through a short historic focus or perspective we could appreciate this catholic control on education matters. However this is something far away from our purpose in this work.



So then, we can mention as the first step or approach to the religious educational field in Spain, that our system makes a promotion or at least a general acceptance of the religious education.³ But, what do we understand with this concept? What are we speaking about when we mention “religious instructions”? This is just a general idea about religious concepts, history and culture or is a kind of dogmatic discipline to create new adepts to the Catholic Church or to other religious groups? We can consider the fact that is really important to establish a criterion or a limit to this general concept used by the Constitution. Is not the same the kind of religious classes received in a public school than in a private one.⁴ Some of the states of our neighbourhood would never have accepted a similar regulation. An educate system like our is not thinkable there although we could be speaking about a country as catholic as the Spanish.⁵

Making an effort to avoid the conflict with the general and basic principle of non-confessional nature of the state, the Spanish lawmaker has recourse to other basic principle as the co-operation between the state and the religious groups in our legal system. So, with this frame of reference, the Spanish lawmaker has created systems of co-operation and collaboration between the religious groups and the public institutions. This is the typical solution in our system, although it is not a completely clear one in relation with the principle of equality mentioned in the article 14 of the Constitution.

While the Catholic Church has reach a full recognition for their institutions working in the educational world, the circumstances are not the same for the other religious confessions recognised inside our system. The situation has suffered a great advance actually in comparison with former times. All the confessions recognised in Spain have

³ DÍAZ LEMA, J.M. *Los conciertos educativos en el contexto de nuestro derecho nacional y en el derecho comparado*. Ed: Marcial Pons, Madrid, 1992.

⁴ This article in our Constitution has the dual purpose to improve the freedom of religion to allow the enrolment in a religious classes (decision taken normally by the parents) or to improve the possibility to not receive these religious classes when these are against the particular and ideological convictions of this parents (or the child himself when he where older than 18 years old.) See MARTÍNEZ BLANCO, A. *La enseñanza de la religión en los centros docentes*. Ed: Universidad de Murcia, Murcia, 1994, p. 86.

⁵ At least the principal countries in Europe have established a system of co-ordination between the State and the different religious groups in educational matters. As example we are going to mention the German system analysed by GEIGER, W. Member of the Constitutional Court in the former Federal German Republic. “Las iglesias en el plano de la educación y formación según el derecho eclesiástico de la RF alemana.” (pp.77-87) *Constitución y relaciones iglesia-estado en la actualidad*. Ed: Universidad Pontificia. Salamanca, 1978. The Germanic Constitution has established no limits but grants also with no especial guaranty to the church activities in the formative field. The religious institutions will concur in this field together with other kind of organisations (as NGO or private institutions), the Article 140 in the Fundamental Law protects only the religious formation. At the same time, many länders have developed a particular regulation in this field covered by they own legislative power, as the crosses’ problem in the schools have proved. See also HENDRIKS, J. “La scuola cattolica in Olanda”, in *Ius ecclesiae*, 1/1990- p. 89-100. AAVV. *Scuola cattolica in Italia, Primo rapporto*. 1999. And see ZIMMERMANN, M. “La liberté d’enseignement au fil des gouvernements succesifs en France” in *Quaderni di Diritto e Politica Ecclesiastica*. 1986. Pp.77-119

included one or more articles in the dispositions regulating the relations between this religious group and the State, related to the educational problem. Even if they did such a regulation with different levels for each one.

For instance, we have a fully developed and specific regulation for the Catholic church, in the educational field, the Agreement of 3 January 1979, between the Spanish State and the Holy See, concerning Education and Cultural affairs which recognises the fundamental right to religious education included in the group of principles of civil liberty in religious affairs. Nevertheless such recognition of freedom is not exactly the same for the other religious confessions accepted in the Spanish system. The three main agreements made in 1992 with the Federation of Evangelical Religious Entities of Spain, the Federation of Israelite Communities of Spain and the Islamic Commission of Spain, have included only one article⁶ related to religious education in the schools. Article 10,1 in these agreements.⁷

Of course, we are not only speaking about the measure or extension in the particular regulation of this matters by the Spanish law maker but about the fact that there exist a qualified and essential difference in this regulation. We consider the fact that this regulation is not the same because of the significance the catholic religious classes has inside the system not only nowadays, but also through the history. Such a situation is only a fiction jet for the other religious confessions recognised in the Spanish State. Although the article 27,3 of our Constitution has made a general mention of this fundamental right to religious education, the legislative development has been not as equal as this constitutional disposition. As an example we can mention the General Act 1/1990⁸ of 3 October, relative to the general regulation of the educational system. The Additional provisions included in this norm makes a particular mention to the Catholic religion: "Religious education shall adapt to the provision established in the Agreement on teaching and cultural affairs signed by the Holy See and the Spanish State and, where appropriate,

⁶ Only comparing the fact that the minority confessions have regulated the situation through one article inside a normal law while the Catholic church has an agreement with the condition of international treaty we can affirm that the circumstances between them are not fully equals.

⁷ " In order to make the provisions of Article 27,3 of the Constitution, and General Act 8/1985 of 3 July, regulating the right to education, and General Act 1/1990, of 3 October, concerning the General Provisions of the Educational System, students, their parents and those school organisms so requesting, shall be guaranteed the right to receive (Evangelical, Jewish, Islamic) religious classes in public and private subsidised schools, at the primary, elementary and secondary levels, as long as the exercise of this right is not in conflict with the nature of the centre."

⁸ This is the principal norm to regulate the educational field in Spain.



to the provisions of any other agreements that may be subscribed with other religious confessions. For this purpose, and in compliance with the provisions of these agreements, religion shall be included as an area or subject in the corresponding educational levels. The educational centre must necessarily offer religious teaching, which shall be voluntary for the students.” That means, in all the educational levels we will find a developed net system for the religious classes of the catholic church, religion is at this level a subject with the same recognition as the other in the assessment system in the primary and secondary school, not at the High School.

Nevertheless, the system establishes for the other minority confessions are not as wide evolved as this one. With the regulation made in the particular agreements of 1992 the religious classes of the other confessions make a completely different kind of mention: “...shall be guaranteed the right to receive (Evangelical, Jewish, Islamic) religious classes in public and private subsidised schools, at the primary, elementary and secondary levels, as long as the exercise of this right is not in conflict with the nature of the centre.” That means, the religious classes, professors and all the system itself will be establish when the group of affected people will demand such a conditions to the competent administrative body. We are in front of a completely different approach, in the first case the State will directly offer this classes of catholic religion in the schools, while in the second hypothesis this classes should be demanded on advance by parents and students. All the regulation in this field is also an evidence of such a differentiation.⁹

Within this context of divergence regulation we want to indicate the problem arose recently concerning the application and development of these norms in the case of the

⁹ Comparing the particular disposition related to catholic religion classes in the schools we will find a largest number of norms related to the Catholic Church than to the other minority confessions recognised in our country. We are not speaking about the general norms as the Constitution and General Act, but there exist many other ways to regulate this field through a network or decrees and minor dispositions affecting to some main points in this matters of education. We found various norms as, Royal Decrees to establish the subject of religion classes in primary and secondary schools, 1006 and 1007 of 14 June 1991; structure of the High education level, art. 16 related to catholic religious classes, in the Royal Decree 1700/1991 29 November. Other norms are directly related to the professor of catholic religion in the primary and secondary schools, Order of 26 September 1979 to establish the payment for the professor of religion (catholic) in the secondary level, other dispositions in the same field where made between 1982 and 1986, in 1993 we found the Order of 9 September enacting the publication of the covenant about the economical regime of the persons in charge of the catholic religious education in the public centres of primary education.

If we compare this regulation with the group of norms concerned to the minority confessions we can estimate the divergence arrangement made in our legal system. There are three dispositions concerning the education of evangelical or Muslim religion classes in the primary and secondary level: the Order of 28 June 1993 about the subject tough at this level, the Order of 11 January of 1996 ordaining the publication of the issues included as religious classes, and the Resolution of 23 April 1996 and Accord, concerning the designation and economic regulation of persons responsible for evangelical religious teaching at public primary and secondary educational teaching centres. The same Resolution of 23 April 1996 is also applicable for the Muslim religion classes.

other non-catholic confessions. At the same time that the catholic religious classes had been established in all the educational levels, without problems because of the previous background structure already created during centuries by the Catholic church; in the case of the religious minority groups the possibility to have access to religious classes has become a fight against the system. One thing is the particular mention included in the Constitution, the agreements, General Acts and rules, and other thing in the application in fact of these norms.

We are going just to mention the problem in Melilla where the Muslim community is an important one. In the schools the religious lessons of other than the catholic one is not yet developed. It seems that in the new academic year (2000- 2001) will be already established the net of professors of Muslim religion. The election of these people had been a complicated one, and nowadays the main problem seems to be a kind of discrimination in relation with the payment. The professors of catholic religion classes will receive a higher income than the same professor in the Muslim religious side; the criterion to this differentiation is located in the number of hours which both of them will work each week.

The Islamic association Badr (located in Melilla) has already speak about discrimination during the large process of election and designation of the professor opted to teach this classes. According to this Association the government (first the socialist party and now the popular party) have developed a kind of obstructive policy, because they accept and made the legal recognition in one side but in the other hand they create many problems in the application of these dispositions. Because they establish a not acceptable labours conditions, a minimum salary an inadequate number of official hours, and so on for the minority confessions professors. As Badr pointed out, the purpose of the government is to establish a kind of unacceptable conditions for these professors and at the same time, to create the idea that the religion Muslim classes are not implanted yet because of the problems inside the particular and own Muslim group. It seems that the conflict has been solved because the professor have been designed although they speak now about discrimination in the salary because of this difference number of practical hours in comparison with the professors of catholic religion classes. If this problem is not solved it will be again not possible to began the next academic year with the religious classes in Melilla.

The comparative grievance is bigger if we contrast the elaborated normative system made for the catholic religious classes with the system established for the other



confessions, as we have already mentioned. How can we continue affirming and maintaining the principle of equality in the face of the aforementioned situation?

Finally we want to finish this short general analyse of the educative system in Spain with a brief mention to the norm which regulates particularly this field, the Royal Decree 2438/1994,¹⁰ dated 16 December, regulating religious education. This Royal Decree was made in compliance with the second additional provision of the General Act 1/1990. According with this regulation the teaching of Catholic religion shall be imparted at educational centres of the second cycle of Pre-school, Primary Education, Compulsory Secondary Education and High School; shall be voluntary for the students, and for those students who have chosen not to attend religion classes, the centres will organise alternative studies, as complementary studies, to be held simultaneously with religion classes, religious classes shall be taught by persons designated by the academic authorities from amongst those proposed by the diocesan ordinary to do so, in the case of the Catholic church, or the competent organ in the case of the other confessions under the provisions of the laws approving the respective Agreements of Co-operation.

These are some of the central dispositions included in this Royal Decree, in general point of view. Although one of the crucial points we want to indicate now is related to the consideration granted to the religious classes in the assessment system. Article 5,3 in this Royal Decree establish that: “ At the High School level and for the purpose of guaranteeing the principle of equality and freedom of attendance for all students, grades obtained in the evaluation of religion classes shall not be included in the calculation of averages for determining university acceptance nor for the obtention of scholarships or student aid carried out by public authorities where the grade point average of the academic record is to be used as a criteria of selection for applicants.”¹¹

This is the logical situation in a legal system, which protects the principle of non-confessional nature of the State. There exists then no other option than to accept a class of religion education created as a complement in the formative process for the student without an inclusion of ideological and theological doctrines. Such an arrangement seems to be under a process of reform nowadays. We have already mentioned the parliamentary problem in the former legislative period for the Popular party, we can mentioned now the

¹⁰ This is a norm made after the agreements with the minority confessions so it works as the main stone in the religious educational system.

¹¹ While for compulsory education, the grade obtained for religion has the same weight as the grade obtained for all the other subjects included in the curriculum, at the high school level, grades obtained in religion are not calculated for the sole purpose of obtaining the average grade for university acceptance, nor in the process of selection of scholarship and study aid requests in case academic records should be studied in order to establish the criteria of priority.

amendment project of the aforementioned Royal Decree 2438/1994 with a scheme presented the 30 of April 2000 about Culture, values and religion.

We have already see the consideration granted by our system to the classes of religion inside the educational system, they are not taken in consideration to make the general assessment to access to the University level. The new project has made a radical change in this point: which could change this situation. The article 3 included in the project says that: “ All the subjects included in the group of options established in this royal decree will be developed according with the same academic, systematic, scientific and didactic requirements, than the other subject and will be submitted to the same assessment demands already established as a general criterion for all the subject.”

A change of this level has a great significance to the value we concede to the religion as a subject in the schools in our country, especially if we take in consideration the especial system of designation of the persons in charge of these classes. These professors although they can be consider as staff in the educational centre and with the same range and salary as the other professors, have passed an especial and peculiar selection. The ecclesiastical authority has designated them and they have a direct and obvious dependence on this authority. Such dependence has been already proved in the catholic case meanwhile in the others we still have to wait to confirm it because of the aforementioned problems in the establishment of these classes of Muslim or evangelical religion.

Until the moment we can speak only about a project but the current political circumstances could be favourable for the confirmation of such a project. The latest news suggests that such a project of reform has been postponed and the former Royal Decree will continue being applicable.¹² In the case that some change will be made in this field we relied on that would be in favour of a subject of religion far away from the dogmatism and on the side of a full inclusion of the different points of view about a phenomenon like the religion, points of view that are required for the formation of a free and tolerant attitude.

¹² This is the conclusion made after the public intervention of the General Secretary of Professional Education and Formation, at the Ministry of Education in relation with the change of the aforementioned Royal Decree 2438/94 by the new project of 30 April 2000. The situation of the evaluation of the religion as a subject in the schools will be the same as nowadays. Religion won't be taken in consideration to make the final assessment in the curriculum of the student. Publication made the 15 August 2000, in *La voz de Galicia*.

