

Published online on 5 November 2025.

*Religious claims in child-rearing under the case law of the European Court of Human Rights**

Le istanze religiose nell'educazione dei figli nella giurisprudenza della Corte Europea dei Diritti dell'Uomo

FABIO FRANCESCHI

RIASSUNTO

L'educazione dei figli è certamente uno degli ambiti in cui i conflitti e le controversie tra credenze religiose, valori laici e regolamentazione giuridica sono più diffusi nei paesi europei. Per risolvere queste controversie, le norme della CEDU (in particolare, l'articolo 2 del Protocollo addizionale n. 1) devono essere applicate in modo coerente con il diritto internazionale, e in particolare con l'articolo 14 (2) della CRC, che impone agli Stati parti di rispettare i diritti e i doveri dei genitori di guidare i propri figli nell'esercizio del loro diritto alla libertà di pensiero, di coscienza e di religione in modo coerente con le capacità di sviluppo degli stessi (e sulla base del superiore interesse del minore, come garantito dall'articolo 18 (1) della Convenzione). Il saggio proposto esamina la giurisprudenza non sempre lineare della CEDU in materia, tesa alla ricerca di un difficile equilibrio tra la tutela della libertà religiosa dei genitori e dei figli, gli interessi superiori del minore e la funzione protettiva dello Stato nel campo della istruzione. L'analisi porta inevitabilmente a riflettere sulla corretta portata del margine di apprezzamento, spesso utilizzato dalla Corte per risolvere pilatescamente i casi più controversi all'intersezione tra diritto, religione e famiglia.

PAROLE CHIAVE

Educazione religiosa dei figli; libertà religiosa; diritti dei genitori; interesse superiore del minore; Corte Europea dei Diritti dell'Uomo

ABSTRACT

Many of today's most heated debates on religious freedom concern family-related issues. Among them, child-rearing is one of the areas where conflicts and disputes between religious beliefs, secular values and legal regulation are most prevalent in European countries. In order to resolve these disputes, CoE law (in particular, Article 2 of Protocol No. 1 to the ECHR) must be applied in a manner consistent with international law, and in particular with Article 14 (2) of the CRC, which requires States Parties to respect the rights and duties of parents to guide their children in the exercise of their right to freedom of thought, conscience and religion, in a manner consistent with the child's evolving capacities (and based on the best interests of the child, as guaranteed by Article 18 (1) of the Convention). This essay examines the ECtHR's case-law on this subject, which is constantly seeking a difficult balance between the protection of the religious freedom of both parents and children, the best interests of the child, and the state's protective function. The analysis inevitably leads to reflection on the proper scope of the margin of appreciation, often used by the Court to resolve in a "Pilates way" the most controversial cases at the intersection of law, religion and family.

KEYWORDS

Religious child-rearing; religious freedom; parental rights; best interests of the child; European Court of Human Rights.

* The essay is a revised version, with the addition of notes and a list of references, of the paper presented at EUARE's Eighth Annual Conference "Religion and Socio-Cultural Transformation: European Perspectives and Beyond" - University of Vienna, July 8-12, 2025 - ORFECT Panel: "Marriage and Family Relations in the Case-Law of the ECHR".

Published online on 5 November 2025.

TABLE OF CONTENTS: 1. *Focus on the issue and scope of the investigation.* – 2. *Religious claims in child-rearing. Conflicts and disputes between religious beliefs, secular values and legal regulation.* – 3. *Basic legal framework: a) Context and key principles. – b) International protection. – c) European children's rights law.* – 4. *The ECtHR's case law. Striking a difficult balance between the protection of the religious freedom of parents and children, the best interests of the child, and the state's protective function.* – 5. *The margin of appreciation: a solution to the problem of religious claims in child-rearing or simply a way around the problem without solving it?* – 6. *Concluding remarks*

1. Focus on the issue and scope of the investigation

The role of religious claims in child-rearing is a complex and highly sensitive issue, involving questions relating to the rights of parents (i.e. respect for the religious beliefs of parents and their right to bring up their children in accordance with their religious beliefs), the freedom and autonomy of children (with particular reference to the proper delimitation of the concept of the best interests of the child in relation to the different stages of growth), the protection of the cultural and religious identity of individuals within the family and society, the state's duty in ensuring instruction, including religious education, and, more generally, the role of religion in modern secular societies. Addressing this issue requires contextual consideration of multiple aspects and dimensions: legal, ethical, psychological, anthropological, socio-cultural, etc.

Obviously, it will not be possible to cover all these aspects in this short essay, which can only offer an overview of the most controversial issues in the field of religious education of children, focusing on the recent case law of the European Court of Human Rights. For further details on the individual aspects under discussion, please refer to the numerous brilliant studies that exist in this field, not only of a legal nature, which will be referred to in the paper.

2. Religious claims in child-rearing. Conflicts and disputes between religious beliefs, secular values and legal regulation

When speaking of religious claims in child-rearing, the reference is essentially to beliefs or practices based on religious teachings that parents use to guide their children's up-bringing¹. For example, the

¹ According to the 1989 UNCRC, a child is anyone under the age of 18. This is obviously a broad age range that, even within a common legal framework, poses challenges and requires partially different solutions depending on the different stages of children's cognitive development, which correspond to different levels of maturity and the resulting autonomy that must be recognized with respect to educational choices, including religious ones.

Published online on 5 November 2025.

imposition of behaviors based on belonging or adherence to a religious faith, in various areas or life aspects (dress codes, religious symbols, diet, sexual habits or sex life, etc.), the demand for compulsory participation in religious rituals or services, the choice of a faith-based education or the denial of exposure to secular teachings, the refusal of medical treatments (such as blood transfusions) on religious grounds, etc.

These claims, often rooted in religious texts and traditions, have a significant impact on family roles and social behavior in many countries and cultures around the world, even within secularized European societies. Not only do they shape values, beliefs and parenting practices, but, more importantly, they can influence the upbringing of children, both positively (higher levels of psychological well-being during adolescence, contribution to the development of a value system and a significant level of resilience in children's growth, etc.) and negatively, especially when linked to authoritarian parenting styles (increased risk of mental health problems, lower levels of educational attainment, difficulties integrating and socializing with peers, etc.). In fact, religious experience in a child's upbringing is a fundamental element of their personality and growth, and therefore of the way they are destined to relate to the world.

Given the sensitivity of the issue of religious claims in child-rearing and the plurality of interests at stake, addressing it requires a balance between all relevant interests (parents' rights, the best interests of the child, but also the role of the State in ensuring education and protection), taking into account the specific circumstances of the case and the context.

From a legal perspective, this balance must be achieved within the framework of certain guiding legal principles established at international level (first and foremost, as we shall see, the best interests of the child, which acts as a limit on the rights of parents).

In this regard, the rights and responsibilities of parents must first be considered. Many religious teachings, including those of the Abrahamic religions (Christianity, Judaism, Islam), assign parents a moral duty and a sacred responsibility in the religious education of their children (in some cases considering the transmission of faith to be a divine duty). This entails certain mandatory acts and observances for children, often from an early age (baptism for Catholics, circumcision and Shabbat observance for Jews, memorization of the Koran or veiling for Muslims, etc.)², as well as the community's recognition of the parents' responsibility to correct any deviant behavior, in some cases even through corporal punishment. These teachings usually place the family at the center of moral teaching and often

² Among these acts, some may be considered illegal in Western legal systems, as in the case of female genital mutilation, which is prohibited both at the European level and in the laws of most European states.

Published online on 5 November 2025.

reflect traditional gender roles (paternal authority, female status, etc.), which some critics argue may limit the autonomy of children as they grow up³.

In principle, based on the right to religious freedom recognized by the main supranational human rights instruments, parents are generally granted the legal and moral right to educate their children in accordance with their religious convictions or beliefs. This is because religion is often considered a vital part of children's cultural and moral education. Parents may consider it essential for teaching ethics, social responsibility and the transmission of values. In accordance with this right, national laws generally recognize the existence of a fundamental interest of parents in the freedom to provide for the care and education of their children, which includes the right to expose them to various belief systems, philosophies or religions, and to make decisions about religious acts, rites and observances from an early age. Since parents are presumed to be acting in their children's best interests when imposing such education, a restriction on their right to guide their children's religious education can only be permitted if there is evidence that the parents' decisions are contrary to the best interests of their children.

However, children also are holders of rights, particularly in terms of developing autonomy and consent (so-called "cognitive development"). They are beneficiaries of all human rights and subject to specific regulations, given their unique characteristics. Among these, obviously, is the fundamental right to freedom of thought, conscience, and religion⁴. Some observers argue that imposing religious beliefs before a child can critically evaluate them may limit and even compromise their future autonomy. Above all, there are concerns about indoctrination that may be associated with the religious education of children. Some fear that dogmatic religious teaching, presented as absolute truth without exposing alternatives, discourages questioning or exploring other worldviews. Nor does the consideration that children, at least in theory, could reevaluate and modify their beliefs as they grow up seem sufficient to counter this danger. In fact, even where this right is guaranteed by law, it is often difficult to implement due to strong family and social influences that can condition and limit adolescents' freedom of choice in religious matters. This requires States to verify and ensure that the freedom of education legitimately

³ See AISYAH NABILAH, *Religious Influences on Parenting: A Cross-Cultural Examination of Faith-Based Child-Rearing Practices*, "International Journal of Islamic Social Studies", 3, 2025, pages 21-43.

⁴ See DAVID DURISOTTO, *Educazione e libertà religiosa del minore*, Jovene, Napoli, 2011; BARBARA BENNETT WOODHOUSE, *Religion and Children's Rights*, in JOHN WITTE, M. CHRISTIAN GREEN (eds.), *Religion and Human Rights: An Introduction*, online edn. Oxford Academic, 2015, pages 299-315; SILVIA ANGELETTI, *I minori tra diritto e religione. Libertà religiosa, best interests, educazione*, il Mulino, Bologna, 2022; FRIEDRICH SCHWEITZER, *Children's Right to Religion and Religious Education. Access to Religious Education in Early Childhood as a Human Right*, in ARNIKA KUUSISTO (ed.), *The Routledge International Handbook of the Place of Religion in Early Childhood Education and Care*, London and New York, Routledge, 2022, pages 83-92.

Published online on 5 November 2025.

granted to parents is effectively and adequately balanced by the recognition of the inviolable rights of children, in particular the right to the full development of their personality⁵.

It's not surprising that there is widespread debate about religious claims in child-rearing (particularly the limits of parental rights in matters of education) and the appropriateness of exposing children to a religious tradition or imposing it as an indisputable truth. Religious and secular child-rearing methods are often compared, highlighting the pros and cons of each⁶.

Assuming that, within the broader context of the right to equitable development and an open future for children, freedom of choice in this area must be guaranteed, including exposure to different worldviews (religious, ethical, philosophical, etc.), it is legitimate to question whether it is actually ethical to instill a belief system in a child before they are able to evaluate it critically⁷. Indeed, when discussing the religious up-bringing of minors, it cannot be denied that the line between legitimate guidance and indoctrination can easily become blurred and crossed, leading to forms of potential coercion. Thus, while early religious training can certainly provide children with a strong sense of identity and community belonging, promoting their moral development and emotional well-being, it can also limit autonomy and critical thinking. Above all, it can lead to the development of feelings of guilt, fear or shame in children who are too young to reason consciously and appropriately in highly controlling or punitive religious contexts (e.g., in relation to concepts such as hell, sin, divine punishment or other types of metaphysical threats), as well as family conflicts during adolescence if children begin to question imposed beliefs. It should also be considered that in many cases, parents' choices regarding religious education can lead to children's social isolation (at school, in sports activities, in social relationships, etc.), while if children grow up questioning and rebelling against their parents' educational choices, isolation within the ethnic-religious community can occur (especially in immigrant contexts), and in some cases the consequences can be even more serious and sometimes tragic (as in the case of rebellions against the imposition of forced marriages, especially at an early age).

⁵ In this regard, see RACHEL E. TAYLOR, *Responsibility for the soul of the child: the role of the state and parents in determining religious upbringing and education*, in *International Journal of Law, Policy and the Family*, 2015, pp. 15-35.

⁶ Within secular educational methods, two different methodological approaches have been developed and applied in legal scholarship and case law: one that focuses primarily on parents' rights regarding their children's religious education, subject to the principle of the best interests of the child (which limits parental rights), and one that primarily values the child's autonomy in religious matters.

⁷ According to some critics, irreversible or identity-shaping acts (including religious ones) should be delayed until the child can choose.

Published online on 5 November 2025.

This is why some educators and philosophers advocate a balanced approach: teaching children about different religions (and non-religious views) to foster open-mindedness and critical thinking. Secular humanists, on the other hand, argue that religious education should be optional, with an emphasis on children's autonomy. Of course, this approach can be guaranteed in public school education, but not in families, where parents have and maintain a leading role in the education of their children, including religious education⁸.

In any case, it cannot be overlooked that in modern secular societies, the concept of the parent-child relationship has evolved, influencing the way parental authority is exercised. This has led to greater attention being paid to protecting children's rights to receive, even within the family, an educational program that enables them to develop a personality capable of autonomous self-determination, including from a religious point of view. This attention is reflected in the law through the growing recognition of the centrality of the best interests of the child.

3. Basic legal framework

A) Context and Key Principles

In liberal democracies, parents' rights are generally protected, including the right to raise their children in a religious faith or tradition. Children's rights are also recognized and protected, particularly regarding health, education, and freedom of belief. Since children's education is a community interest, states have a primary and essential role in this regard. In particular, they are required to ensure the existence of an accessible, free, and pluralistic education system. Furthermore, they perform a protective function, balancing all relevant interests, in light of national and supranational legislation, and must protect children from mistreatment, both within the family and in schools (public and private). In fact, religious child-rearing is generally considered as permissible unless it harms the child. This is why national

⁸ Regarding the debate on religious education in public schools, see JOHN WHITE, *Should religious education be a compulsory school subject?*, in *British Journal of Religious Education*, 26(2), 2004, pages 151-164; DANIEL MOULIN, *Doubts about Religious Education in public schooling*, in *International Journal of Christianity & Education*, 19(2), 2015, pages 135-148; ALBERTA GIORGI, PASQUALE ANNICCHINO, *Do Not Cross the Line: The State Influence on Religious Education*, "Politics and Religion", 12, 2019, pages S55-S78; ANCA GHEAUS, *Enabling children to learn from religions whilst respecting their rights: against monopolies of influence*, in *Journal of Philosophy of Education*, 58, 1, 2024, pages 120-127.

Published online on 5 November 2025.

legislation and jurisprudence sometimes intervene when religious claims lead to harmful practices (e.g., refusal of medical care, corporal punishment, etc.).

In any case, as a general principle, parents' rights and duties to guide their children in exercising their right to freedom of religion must be exerted in a manner consistent with the child's evolving capacities. Above all, in this matter, autonomy (both of parents and children) and authority (of parents) must be balanced in light of the fundamental principle of the best interests of the child, which is a pillar of supranational law, now widely recognized and applied in various regional human rights protection systems. It is a fundamental interpretative rule that guides the way in which courts and administrative authorities must interpret and apply existing laws relating to children, not only in the field of education, but also in family law, adoption, migration, etc. It requires that in all actions and decisions affecting children, public institutions, courts of law, administrative authorities or legislative bodies must consider the best interests of the child as "a primary consideration"⁹, ensuring the promotion of the child's physical and mental well-being and giving priority to the interests most conducive to the child's balanced and healthy growth and development. There is a corollary to this principle, according to which, when balancing the interests of the child with other rights and interests involved, including those of the parents, the latter are recessive, having to give way to the rights of the child, who is considered the weaker party in the relationship and therefore in need of greater protection¹⁰. However, this balance is often difficult to achieve, due to the potential conflicts between religious beliefs, secular values, and the State's duty to provide education and protection. It is not surprising that child-rearing is one of the areas where conflicts and disputes are widespread in European countries.

⁹ See UNITED NATIONS, *Convention on the Rights of the Child* (CRC), Article 3 (1). See also UNITED NATIONS, Committee on the Rights of the Children, *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), §§ 32-40. On the principle of the best interests of the child and its role in matters relating to the religious child-rearing, see MICHAEL DAVID ALAN FREEMAN, *Article 3: the best interests of the child*, Leiden, Boston, M. Nijhoff, 2007; NADIA DI LORENZO, *Il principio del superiore interesse del minore nel sistema di protezione del fanciullo all'interno delle relazioni familiari*, in ANTONIO RUGGERI, DINO RINOLDI, VALENTINA PETRALIA (a cura di), *Vecchie e nuove 'famiglie' nel dialogo tra corti europee e giudici nazionali*, Editoriale Scientifica, Napoli, 2014, pp. 299-335; URSULA KILKELLY, *The Best Interests of the Child: A gateway to Children's Rights?*, in ELAINE E. SUTHERLAND, LESLEY-ANNE BARNES MACFARLANE (Eds.), *Implementing Article 3 of the United Nations Convention on the Rights of the Child: Best Interests, Welfare and Well-being*, Cambridge, Cambridge University Press, 2016, pp. 51-66; VINCENZO LORUBBIO, *The best interests of the child: more than a right, a principle, a rule of procedure of international law*, Editoriale Scientifica, Napoli, 2022; MARCO PARISI, *Il principio del "best interest of the child" nelle attuali dinamiche di libertà religiosa nella scuola*, in *Diritto e Religioni*, 2, 2023, 1, pp. 188-221.

¹⁰ The principle concerns the physical, mental, emotional, educational, and social development needs of the child. It applies to all children, regardless of their status, background, or other characteristics. Obviously, the "best interests" is not a fixed concept and must be determined flexibly depending on the specific circumstances of each case. See UNITED NATIONS, Committee on the Rights of the Children, *General comment No. 14 (2013)*, cited, §§ 52-79 (*Elements to be taken into account when assessing the child's best interests*) and 80-84 (*Balancing the elements in the best-interests assessment*).

Published online on 5 November 2025.

b) *International protection*

When examining the relevant legal framework, consideration must be given to both the supranational and European levels, within which the general principles are established. In addition, individual national regulations must also be taken into account, as these may vary from country to country on specific aspects.

At the supranational level, forms of recognition and protection for issues related to the religious education of children within the family were already provided for in the 1966 UN *International Covenant on Civil and Political Rights*, which recognized the right to religious freedom and non-discrimination on religious grounds (Article 18.1 and Article 26) and required States Parties to «respect the freedom of parents and, where applicable, legal guardians, to ensure the religious and moral education of their children in conformity with their own convictions» (Article 18.4)¹¹.

Regarding the specific protection of children's religious freedom, its first recognition was achieved with the 1981 UN *Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief*, which provides that religious practices shall not be harmful to the physical or mental health or to the full development of the child¹².

¹¹ UNITED NATIONS, *International Covenant on Civil and Political Rights*, General Assembly resolution 2200A (XXI), 16 December 1966, Article 18. See also the 1966 UN *International Covenant on Economic, Social and Cultural Rights* (General Assembly resolution 2200A (XXI), 16 December 1966), within which Article 13 recognizes the right of everyone to education, calling State parties to «have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions» (Article 13.3). See also URSULA KILKELLY, *The child's right to religious freedom in international law*, in MARTHA ALBERTSON FINEMAN, KAREN WORTHINGTON (eds), *What is Right for Children?*, Farnham, Ashgate, 2009, pages 243-268.

¹² UNITED NATIONS, *Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief*, General Assembly resolution 36/55, 25 November 1981. Specifically, Article 5 provides that «1. The parents or, as the case may be, the legal guardians of the child have the right to organize the life within the family in accordance with their religion or belief and bearing in mind the moral education in which they believe the child should be brought up. 2. Every child shall enjoy the right to have access to education in the matter of religion or belief in accordance with the wishes of his parents or, as the case may be, legal guardians, and shall not be compelled to receive teaching on religion or belief against the wishes of his parents or legal guardians, the best interests of the child being the guiding principle. 3. The child shall be protected from any form of discrimination on the ground of religion or belief. He shall be brought up in a spirit of understanding, tolerance, friendship among peoples, peace and universal brotherhood, respect for freedom of religion or belief of others, and in full consciousness that his energy and talents should be devoted to the service of his fellow men. 4. In the case of a child who is not under the care either of his parents or of legal guardians, due account shall be taken of their expressed wishes or of any other proof of their wishes in the matter of religion or belief, the best interests of the child being the guiding principle. 5. Practices of a religion or belief in which a child is brought up must not be injurious to his physical or mental health or to his full development, taking into account article 1, paragraph 3, of the present Declaration».

Published online on 5 November 2025.

However, it was only with the 1989 UN *Convention on the Rights of the Child* (CRC), an international human rights treaty outlining the fundamental rights of children ratified by 196 countries, that the child's personal right to religious freedom was fully affirmed, including in education¹³. This right was strengthened by the provision of general principles to which States must conform to ensure the effectiveness of the recognized protection. The Convention adopted an approach according to which parental responsibilities in child-rearing need to be exercised with the best interests of the child as a primary consideration¹⁴. Article 14 of the CRC expressly recognizes minors as independent holders of the right to freedom of thought, conscience and religion (para. 1), while granting parents or legal guardians the right (but also the duty) «to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child» (para. 2). In addition, it requires States Parties to respect these rights and expressly indicates the conditions under which States may impose limitations on them (para. 2-3)¹⁵. The subsequent Article 18 (para. 1) of the CRC clearly states that the best interests of the child must be the basic concern of parents for the child's development and upbringing, including religious ones, clearly recognizing the priority of this principle over parental responsibilities in this area¹⁶. Therefore, this overarching principle is central in any decisions related to religious upbringing. The child's well-being, autonomy, and development must guide how conflicts between parental authority and children's rights are resolved.

Similar assertions can be found in other specialized international treaties and documents, such as the 1980 *Hague Convention on the Civil Aspects of International Child Abduction* (the "Hague Convention"), the 1999 *African Charter on the Rights and Welfare of the Child*, the 2004 *Arab Charter on Human Rights*, etc.

c) *European children's rights law*

¹³ UNITED NATIONS, *Convention on the Rights of the Child*, General Assembly resolution 44/25, 20 November 1989. For further details, see JOHN TOBIN, *The UN Convention on the Rights of the Child: A Commentary*, Oxford University Press, Oxford, 2019.

¹⁴ UNITED NATIONS, *Convention on the Rights of the Child*, Article 3 (para. 1): «In all actions concerning children [...] the best interests of the child shall be a primary consideration».

¹⁵ UNITED NATIONS, *Convention on the Rights of the Child*, Article 14 (para. 2-3): «2. States Parties shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child. 3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others».

¹⁶ UNITED NATIONS, *Convention on the Rights of the Child*, Article 18 (para. 1): «States Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern».

Published online on 5 November 2025.

In the European legal system, the primary and most important source regarding religious rights in children's education is the *European Convention on Human Rights* (ECHR), the main instrument for protecting human rights and political freedoms throughout Europe, which focuses on the rights and duties of parents in education, the rights of children to education both at home and at school, and the necessary protective functions of states¹⁷.

These rights and duties are protected by the ECHR through various provisions.

Firstly, Article 9 of the Convention must be considered, which recognizes everyone's right to freedom of thought, conscience and religion, including the freedom to manifest one's religion or belief in teaching and practice (but providing for the possibility that the freedom to manifest one's religious belief may be restricted, if necessary in a democratic society, in particular to protect the rights and freedoms of others, including minors)¹⁸. This provision, which grants rights to both parents and children (for the latter, the exercise of these rights is obviously proportionate to their level of intellectual growth and maturity), constitutes the basic framework and essential reference point for the protection of rights in the education of children.

Secondly, Article 8 of the ECHR, which establishes the right of every individual, including parents and children, to respect for private and family life (including the concept of personal autonomy) must also be taken into account. This provision entails not only a negative obligation on States to refrain from interfering with family life, but also a positive obligation to act to ensure the protection of the right to respect for family life. It usually deals with issues relating to the personal identity of minors, including their education and their relationship with their parents (with reference to this article, the ECtHR has addressed cases concerning cultural, linguistic and religious identity in childcare and custody)¹⁹. It should be noted that Article 8 of the Convention does not expressly mention the principle of the best interests

¹⁷ For further information, see MYRIAM RADHOUANE, AKKARI ABDELJALIL, *Comparative International Research on Religion and Education: The Council of Europe*, in LIAM FRANCIS GEARON, ARNIKA KUUSISTO (eds.), *The Oxford Handbook of Religion and Education*, online edn, Oxford Academic, 2025, pages 333-345.

¹⁸ See COUNCIL OF EUROPE, *European Convention on Human Rights*, 4 November 1950, Article 9, para. 1-2. See also EUROPEAN UNION AGENCY FOR FUNDAMENTAL RIGHTS AND COUNCIL OF EUROPE, *Handbook on European law relating to the rights of the child*, 2022 edition; *Council of Europe Strategy for the Rights of the Child* (2022-2027) (<https://www.coe.int/en/web/children/strategy-for-the-rights-of-the-child>).

¹⁹ For example, see ECtHR, *Róžański v. Poland*, No. 55339/00, [Section II], 18 May 2006 (Putative father unable to seek legal paternity by means of a procedure directly accessible to him: violation of Article 8.1); *Catan and Others v. Republic of Moldova and Russia*, Nos. 43370/04, 8252/05 and 18454/06, [GC], 19 October 2012 (Closure of schools teaching in Latin script and harassment of pupils wishing to be educated in their national language: violation by Russia of Article 2 of Protocol No. 1 to the ECHR in relation to parents' philosophical convictions).

Published online on 5 November 2025.

of the child, nor is it provided for as an autonomous right elsewhere in the Convention, as in the UNCRC. However, even within the ECHR system, the principle of the “best interests of the child” is a fundamental concept. It must be considered implicitly incorporated into the ECHR through reference to the 1989 UN *Convention on the Rights of the Child*, with the consequence that national authorities are required to take the child’s best interests into account as a primary consideration in all decisions concerning them. Above all, it constitutes the primary interpretative criterion for resolving conflicts in this area before the Strasbourg Court, where the principle is applied on a case-by-case basis through both procedural review (aimed primarily at verifying that the opinions of the parents and the child have been adequately heard and taken into account, in the case of the latter obviously in a manner appropriate to his or her age) and substantive review (regarding the fairness of the decision with respect to the various interests at stake).

In addition to these general rules, the ECHR system includes a specific provision relating to children’s education, namely Article 2 of Protocol No. 1 to the Convention, which enshrines the right of individuals to education and the right of parents to ensure that their children receive an upbringing in accordance with their religious and philosophical convictions²⁰.

Article 2 of Protocol No. 1 contains two sentences that must be read not only in light of each other, but also of Articles 8, 9, 10, and 14 of the Convention, as well as in harmony with the other rules of international law of which the Convention forms part²¹. The first sentence establishes that no one may be denied the right to education. However, the right to education is not absolute, as it may give rise to implicitly accepted limitations. It is up to individual member states to regulate the specific forms of exercising this right. Such regulation may vary over time and space, depending on the needs and resources of communities and individuals, and must never compromise the substance of the right to education or conflict with other rights enshrined in the Convention. In particular, the provision aims to ensure that education is imparted in an objective, critical, and pluralistic manner, without any form of indoctrination. Religious instruction, including that based on a specific religious faith, is not excluded in public primary and secondary schools. Indeed, pluralism, as a condition of democracy, does not preclude the legitimacy of religious instruction based on a particular faith, provided it is optional, imparted objectively, critically,

²⁰ COUNCIL OF EUROPE, *Protocol No. 1 to the European Convention on Human Rights*, Article 2: «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 religious and philosophical convictions».

²¹ See ECtHR, *Guide on Article 2 of Protocol No. 1 to the European Convention on Human Rights*, Right to education (Updated on 28 February 2025), para. 9-10, page 6.

Published online on 5 November 2025.

and pluralistically, and, in any case, under the condition that exemptions from the curriculum are possible²². This is the practice in several European countries. The second sentence of Article 2 of Protocol No. 1 requires states to respect parents' beliefs in the exercise of their educational functions (but also allows for limitations to ensure that children receive a comprehensive education, consistent with their evolving capacities). This means that, within the family, parents have the right to provide their children with the religious education they deem appropriate, without the state interfering with their choices, unless such choices are unlawful or harmful to their children²³.

Within the more limited scope of the European Union, similar protection is offered by the combined provisions of Articles 10, 14 and 24 of the *Charter of Fundamental Rights of the European Union* (CFREU)²⁴. Specifically, Article 10 of the CFREU recognizes the freedom of thought, conscience, and religion of every person, including both parents and children. Article 14 provides for the right of parents to ensure the education and teaching of their children in accordance with their religious, philosophical, and pedagogical convictions. Moreover, Article 24 explicitly states that «In all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration». Thus, in the EU legal system children have the right to their own religious freedom, but while they are minors, their parents (or legal guardians) have priority in religious education. This parental right must be exercised in accordance with the national laws governing its exercise, and always in compliance with the guiding principle of the best interests of the child²⁵. To summarize, these articles require EU member states to respect religious freedom and the right of parents to the religious education of their children, but they do not impose a uniform model of religious education, leaving member states

²² See ECtHR, *Folgero and Others v. Norway*, Application No. 15472/02, [GC], 29 June 2007, according to which, although States have a broad margin of appreciation in defining and organising the curricula of public primary and secondary schools and may legitimately provide religious instruction, such instruction, in order not to violate the right of parents to educate their children in accordance with their own philosophical and religious convictions as provided for in Article 2(1) of the ECHR, must be imparted in an objective, critical and pluralistic manner, without any indoctrination purpose. Similarly, see also ECtHR, *Papageorgiou and others v. Greece*, Nos. 4762/18, 6140/18, [Section II], 31 January 2020.

²³ In fact, parental rights in education are not absolute and must always be balanced with the needs of the community. In any case, States have an obligation to protect children from ill-treatments.

²⁴ See *Charter of Fundamental Rights of the European Union*, 2012 O.J.C 326/391. The CFREU was signed in Nice in 2000 but only acquired full legal effect after the entry into force of the Treaty of Lisbon on 1 December 2009.

²⁵ The EU has also developed a comprehensive *Strategy on the Rights of the Child* to place this principle at the centre of its policymaking. See https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/rights-child/en-strategy-rights-child-and-european-child-guarantee_en. On the rights of minors in relation to religious education in the EU see CLARE MCGLYNN, *Children and European Union law: instrumentalism, protection and empowerment*, in *Families and the European Union: Law, Politics and Pluralism. Law in Context*, Cambridge University Press, Cambridge, 2006, pages 42-77; MARTA PRUCNAL-WÓJCIK, *Religious Education of the Child as Part of Parental Duties – Comparative Legal Analysis of National Reports Submitted to the Commission on European Family Law*, "Multidisciplinary Journal of School Education", 2024, pages 113-130.

Published online on 5 November 2025.

free to do so, provided they respect the fundamental principles guaranteed by the Charter, in particular individual religious freedom, parental rights, and the principle of non-discrimination²⁶.

4. *The ECtHR case law. Striking a difficult balance between the protection of the religious freedom of parents and children, the best interests of the child, and the state's protective function.*

Over time, the European Court of Human Rights (ECtHR) has had to deal numerous cases involving religious child-rearing, recognizing the centrality of religious freedom in this field and seeking to strike a balance between respecting parental rights and ensuring the child's well-being, development, and future choices, taking into account the child's best interests (to be found primarily in the child's development in an open and peaceful environment) and the state's legitimate role in education and protection²⁷.

In such cases, the case law of the ECtHR has consistently emphasized the right of parents to guide the religious and philosophical development of their children in accordance with their religious/non-religious convictions, guaranteed by the provisions of Article 9 of the ECHR and Article 2 of Protocol No. 1 to the ECHR, as a right that can also be protected from unlawful or disproportionate interference by States. Indeed, for a parent to bring his or her child up in line with [his or her] own religious or philosophical convictions may be regarded as a way to «manifest his religion or belief, in [...] teaching, practice and observance»²⁸. However, the Strasbourg judges have also emphasized the non-absolute

²⁶ For further details, see SILVIO FERRARI, *Religion and Education in the European Union Countries: A Comparative Analysis of the National Legal Systems*, in LIAM FRANCIS GEARON, ARNIKA KUUSISTO (eds.), *The Oxford Handbook of Religion and Education*, online edn, Oxford Academic, 2025, pages 346-360. See also RAFAEL PALOMINO LOZANO, *Religion and Education in the Council of Europe: Toward a 'Soft' Constitutionalization of a Model of Religious Teaching?*, in W. COLE DURHAM, SILVIO FERRARI, CRISTIANA CIANITTO, DONLU THAYER (eds.), *Law, Religion, Constitution: Freedom of Religion, Equal Treatment, and the Law*, New York, NY: Ashgate, 2013, pages 369-384.

²⁷ See ECtHR, *T.C. v. Italy*, No. 54032/18, [Section II], 19 May 2022 (No breach of Jehovah's Witness' rights in case concerning dispute over his daughter's religious upbringing). On the case law of the ECtHR concerning the religious education of children see EUGENIA RELANO PASTOR, *Educational Pluralism and Freedom of Religion: Recent Decisions of the European Court of Human Rights*, "British Journal of Religious Education", 32 (1), 2010, pages 19-29; EFFIE FOKAS, *Religion and Education in the Shadow of the European Court of Human Rights*, "Politics and Religion", 12, 2019, pages 1-8; GIUSEPPINA PIZZOLANTE, *Il diritto del minore alla libertà di religione: la recente giurisprudenza della Corte Europea dei Diritti dell'Uomo e il rilievo della convenzione sui diritti del fanciullo*, "Freedom, Security & Justice: European Legal Studies", 2022, 3, pages 134-157.

²⁸ In this regard, see ECtHR, *Abdi Ibrahim v. Norway*, No. 15379/16, [GC], 10 December 2021 (Shortcomings in decision-making process resulting in severance of mother-child ties, in a context of different cultural and religious backgrounds of mother and adoptive parents). Previously, in a similar sense, see also ECtHR, *Folgero and Others v. Norway*, No. 15472/02, [GC], 29 June 2007 (Refusal to grant full exemption from instruction in Christianity, religion and philosophy in State primary schools: violation of Article 2 of Protocol No. 1).

Published online on 5 November 2025.

nature of this right and the possible imposition of restrictions when it conflicts with the best interests of the child, which is paramount in determining matters relating to religious education²⁹.

Therefore, the rights recognized to parents regarding their children's religious education do not automatically grant them the right to impose their beliefs without considering their children's developmental autonomy, which implies the need to respect the child's potential, engaging them and gradually enabling them to make their own choices (while always considering their age and level of maturity). Put differently, parents are responsible for the "educational guidance" of their children, but they are also required to consider their abilities, natural inclinations, and aspirations. This means that parents' right to educate their children according to their own religious and philosophical convictions must be balanced with the need to ensure their children's physical and psychological well-being and with their right to full education and social integration, which presupposes the right to develop freely and without coercion. Even in situations of marital crisis, the Strasbourg Court is inclined to protect the rights of individuals (parents and children) always from the perspective of the child's best interests³⁰. Consequently, in the event of disagreement between the parents, the Court can intervene to balance the rights of both and the best interests of the child, establishing minimum rules to ensure his harmonious development (also by hearing to children whenever possible)³¹. Regarding religious education in state schools, teaching based on a particular faith remains legitimate, provided that it is not compulsory, in which case it would be illegitimate. Parents must always be guaranteed the right to obtain exemption from religious instruction for their children if the state provides specific religious instruction that is not in line with their beliefs or, more generally, if religious instruction is not taught in a sufficiently objective, critical and inclusive manner³². Thus, for example, the Court clarified that religious education based on the teaching of the Holy Scriptures, which results in teaching students to explore the content and structure of the Bible, to compose their own prayers based on it, and to sing religious songs, conveying

²⁹ See ECtHR, *Strand Lobben and Others v. Norway*, No. 37283/13, [GC], 10 September 2019 (Shortcomings in decision-making process resulting in adoption of vulnerable child by foster parents: violation of Article 8 of the ECHR). In this judgement the Court found a violation of Article 8 (right to respect for private and family life) when a child was removed from the biological family and placed in foster care, highlighting the importance (and the oblige of domestic authorities) of balancing the child's and biological family's interests.

³⁰ For further details, see NICOLA TAYLOR, *Relocation Disputes Following Parental Separation: Determining the Best Interests of the Child*, in ELAINE E. SUTHERLAND, LESLEY-ANNE BARNES MACFARLANE (eds.), *Implementing Article 3 of the United Nations Convention on the Rights of the Child: Best Interests, Welfare and Well-Being*, Cambridge University Press, Cambridge, 2016, pages 280-292.

³¹ See ECtHR, *T.C. v. Italy*, No. 54032/18, [Section II], 19 May 2022.

³² The same right may be granted to children themselves once they reach a certain age.

Published online on 5 November 2025.

the message that the Bible is the word of God, who in turn is the creator of all things, cannot be considered objective, neutral, and pluralistic³³.

To achieve balance in religious child-rearing, States are required to ensure that children receive a comprehensive education based on pluralism, tolerance, and the protection of human rights, and above all that they are protected from harm resulting from religiously inspired educational choices imposed by parents. If this does not happen and the best interests of the child are not safeguarded, the Strasbourg judges have recalled the duty of public authorities to intervene, even limiting the freedom of parents in certain situations. Thus, for example, the possibility of ignoring a religious objection to medical treatment if the minor's life is in danger, as in the case of Jehovah's Witnesses, has been affirmed³⁴. However, to be legitimate, any interference with parental rights must always be necessary and proportionate to the legitimate aim pursued, such as protecting the child's physical and mental well-being.

³³ See ECtHR, *Folgero and Others v. Norway*, No. 15472/02, [GC], 29 June 2007, according to which Article 2 of Protocol No. 1 to the ECHR safeguards the requirement that education be imparted in an objective, critical, and pluralistic manner, without any intention of indoctrination. In such a circumstance, the Strasbourg judges have also clarified that the possibility of exemption from religious instruction offered by schools is not a sufficient response to the lack of educational pluralism, as it could place an excessive burden on parents (in terms of exposing sensitive aspects of their private lives), ultimately discouraging them from requesting exemption for their child, who would also remain exposed to the risk of marginalization. Similarly, see also ECtHR, *Hasan and Eylem Zengin v. Turkey*, No. 1448/04, [Section II], 9 October 2007 (Refusal to exempt a State school pupil whose family was of the Alevis faith from mandatory lessons on religion and morals: violation of Article 2 of Protocol No. 1), in which the ECtHR found that Turkey had violated the right to education with regard to compulsory religious instruction, particularly in the area of Alevism. According to the ECtHR judges, Turkey should address the problem primarily by regulating the curriculum according to democratic principles and ensuring its implementation by teachers and the school administration. If this were not possible, at least the exemption system appropriate to freedom of thought, conscience, and religion should be applied; ECtHR, *Papageorgiou and Others v. Greece*, Nos. 4762/18, 6140/18, [Section I], 31 January 2020, in which the Court addressed the issue of compulsory religious education in Greek schools, noting that, although parents have the right to exempt their children from this requirement, they may be required to make a solemn declaration that their children are not Orthodox Christians to obtain it. This could place an excessive burden on parents, with the risk of revealing sensitive aspects of their private lives. Above all, this potential conflict could discourage them from making such a request, especially if they live in a small, religiously united society, where the risk of stigmatization is much higher than in large cities, thus violating Article 2 of the Protocol No. 1 to the ECHR. Therefore, according to the Court, there had been a violation of the applicants' rights under the second paragraph of Article 2 of the Protocol No. 1 to the Convention, since state authorities do not have the right to interfere in the area of individual conscience, nor to compel the disclosure of an individual's beliefs. For further details, see WOJCIECH BRZOWSKI, *Papageorgiou and Others v. Greece: Exemption from a Mandatory Course in Religion and the Art of Reading between the Lines*, in *Ecclesiastical Law Journal*, 2020, Vol. 22(3), pages 355-360; RITA BENIGNI, *Educazione religiosa scolastica e diritto all'esonero in una società democratica (Nota a "Papageorgiou e altri c. Grecia", Corte europea diritti dell'uomo, Sez. I, 31 ottobre 2019, ric. nn. 4762/18 e 6140/18)*, in *Osservatorio costituzionale*, 2, 2020, pp. 410-429.

³⁴ See ECtHR, *T.C. v. Italy*, No. 54032/18, [Section I], 19 May 2022, in which the Court rejected a complaint about the length of appeal proceedings in a case concerning custody and visiting rights, finding no violation of Article 14 (prohibition of discrimination) in conjunction with Article 8. On issues concerning Jehovah's Witnesses, see JAMES T. RICHARDSON, *Update on Jehovah's Witness cases before the European Court of Human Rights: implications of a surprising partnership*, in EFFIE FOKAS, JAMES T. RICHARDSON (eds.), *The European Court of Human Rights and Minority Religions: Messages Generated and Messages Received*, Routledge, London, 2020, pages 232-248.

Published online on 5 November 2025.

Such guidelines on the relationship between parents and children in matters of religious education have been clearly formulated by the ECtHR in its now extensive and consolidated case law on the matter. Among the numerous cases, for example, are *Konrad and Others v. Germany* (Refusal to grant the children exemption from compulsory primary school attendance requested by their parents for religious reasons: inadmissible)³⁵, *Osmanoglu and Kocabas v. Switzerland* (Imposition of fine on parents for refusing, on religious grounds, to allow their daughters to attend compulsory mixed swimming lessons at their primary school; precedence to the children's obligation to follow the full school curriculum: no violation of Article 9(1) of the Convention)³⁶, or, more recently, the aforementioned case *T.C. v. Italy* (No breach of Jehovah's Witness' rights in case concerning dispute over his daughter's religious upbringing)³⁷.

³⁵ ECtHR, *Konrad and Others v. Germany*, No. 35504/03, [Section V], 11 September 2006. It was the case of parents, belonging to a Christian community, that reject the attendance of private or State schools for their children because of sex education, studies of fairytales during school lessons and the increasing physical and psychological violence between pupils. They requested that their children be educated at home in accordance with the syllabus of an institution which specializes in assisting devout Christian parents in this task but was not recognized as a private school by the State. This request was rejected by German courts, because, according to the judges, due to their young age, the applicants' children were unable to foresee the consequences of their parents' decision for home education and could hardly be expected to take an autonomous decision for themselves. Although under the Basic Law the parents had the right to educate their children according to their own philosophical and religious convictions, that right was not exclusive as the State's constitutional obligation to provide education was on an equal footing. This obligation did not only concern the acquisition of knowledge, but also the education of responsible citizens who participate in a democratic and pluralistic society, through the regular contact with society guaranteed by the school attendance. Given the general interest of society in the integration of minorities and in avoiding the emergence of parallel societies, the interference with the applicants' fundamental rights was proportionate and reasonable, as they could still educate their children before and after school as well as at weekends. They were also free to send their children to a confessional school. Moreover, the school's obligation of religious neutrality would prevent the applicants' children from any indoctrination against their will and from superstition. In its judgment, the ECtHR upheld Germany's compulsory school attendance laws, stating that parents' right to educate their children in accordance with their beliefs did not grant them the right to exempt their children from attending school, refusing them the right to education due to their religious beliefs. The right to education by its very nature calls for regulation by the State which enjoys a certain margin of appreciation in setting up and interpreting rules for its education systems. In the absence of a consensus among the Contracting States regarding home education and compulsory attendance of primary schools, the Court held that the decision reached by the German courts fell within the State's margin of appreciation and was compatible with the Court's case-law on the importance of pluralism for democracy. Moreover, the parents' right to educate their children in conformity with their religious convictions was not restricted in a disproportionate manner. On the concept of religious neutrality of the state in the case law of the ECtHR see JULIE RINGELHEIM, *State Religious Neutrality as a Common European Standard? Reappraising the European Court of Human Rights Approach*, in *Oxford Journal of Law and Religion*, 2017, pp. 24-47. In more general terms, see also JAVIER MARTÍNEZ-TORRÓN, *State neutrality and religious plurality in Europe*, in W. COLE DURHAM JR., DONLU D. THAYER (eds.), *Religion, Pluralism, and Reconciling Difference*, Routledge, London, 2019, pp. 159-176.

³⁶ ECtHR, *Osmanoglu and Kocabas v. Switzerland*, No. 29086/2012, [Section III], 10 April 2017. In this judgment, the Court held that the school authorities' refusal to grant two young Muslim girls an exemption from swimming lessons on religious grounds (mixed classes) does not violate their parents' freedom of religion. The refusal is legitimate on the grounds that sports activities in primary schools are intended to promote the social inclusion and integration of pupils, and that the child's interest in attending such lessons lies not simply in learning to swim and in physical exercise, but above all in participating in such activities with all other pupils, without exceptions based on the child's origins or the parents' religious or philosophical beliefs. In denying exemptions on religious grounds, the school authorities are therefore exercising their right to freely define and plan the school curriculum.

³⁷ See ECtHR, *T.C. v. Italy*, No. 54032/18, [Section I], 19 May 2022, in which the Court rejected a complaint concerning the length of the appeal proceedings in a case concerning custody and visiting rights, considering legitimate the

Published online on 5 November 2025.

All these judgments are characterized by the ECtHR's effort to seek a compromise between all the interests at stake (respecting parents' religious freedom in raising their children, ensuring the child's well-being, development and future choices, taking into account the child's best interests and the State's legitimate role in education and protection). This emerges through the adoption of a balanced approach based on three guiding principles: 1. Guarantee parents' religious freedom and their role in raising their children. This means that, as long as there is no evidence of abuse, violence, or unlawful coercion, decisions on whether to provide a child with religious or non-religious education rest exclusively with the child's parents (or, as the case may be, the custodial parent). Such decisions fall within the sphere of private and family life, protected from unjustified state interference³⁸. 2. Balance this parental right with the child's right to education, social integration, and protection from harm, considering the child's best interests and the legitimate role of the State in education and protection. 3. Consider the specific circumstances of each case, including the child's age, the nature of their religious beliefs, and the potential impact on their well-being³⁹.

5. *The margin of appreciation: a solution to the problem of religious claims in child-rearing or simply a way around the problem without solving it?*

prohibition imposed on the parent, during the custody proceedings, from involving his daughter in the functions and practices of his religion. According to the judges, the specific provisions for the exercise of parental responsibility over children defined by national courts cannot, as such, infringe an applicant's freedom to manifest his or her religion. The primary objective is to take into account the best interests of the children and consists in reconciling the educational choices of each parent and seeking to find a satisfactory balance between the parents' individual positions, precluding any value judgments and, where necessary, establishing minimum rules regarding personal religious practices. With specific regard at the best interests of the child, the Court clarified that these lie primarily in the need to maintain and promote his or her development in an open and peaceful environment, reconciling as far as possible the rights and beliefs of each parent. Therefore, a violation of the Convention cannot be found if the contested measure had little influence on the applicant's religious practices and was in any case aimed solely at resolving the conflict arising from the contrast between the educational conceptions of the two parents, in order to safeguard the best interests of the child. See also SPIGNO IRENE, *Il diritto alla libertà religiosa dei minori. Analisi alla luce della sentenza della Corte EDU T.C. c. Italia*, in *Osservatorio costituzionale*, 3, 2023, pp. 248-272.

³⁸ See ECtHR, *Tlapak and Others v. Germany*, Nos. 11308/16 and 11344/16, [Section V], 22 March 2018 (Alleged procedural failings in the domestic court's decision to remove children from their parents: no violation of Article 8 of the ECHR), where, having regard to the circumstances of the case, the Court upheld the removal of children from their parents due to concerns about corporal punishment, emphasizing the protection of the child's physical integrity and dignity.

³⁹ For further details, see ECtHR, *Guide on Article 2 of Protocol No. 1 to the European Convention on Human Rights*, Right to education (2025).

Published online on 5 November 2025.

An analysis of the ECHR's case law on religious claims in child-rearing also calls for reflection on the proper scope of the 'margin of appreciation', often used by the Court to resolve the most controversial cases at the intersection of law, religion, and family⁴⁰.

It is well known that the ECtHR grants a wide margin of appreciation for member states in matters of child-rearing, acknowledging that national authorities are often better positioned (i.e. closest to the situation) to make decisions, considering cultural differences and local circumstances. The role of margin of appreciation in the field of family law and the right to education is evident and truly important. Given the considerable diversity of social attitudes, family traditions and the role recognized by the national authorities in education among the member states of the Council of Europe, it can provide the necessary flexibility for national authorities to take decisions on the care and upbringing of children in line with the specificities of the national legal system and the role recognized for religious claims within it. Thus, in the ECHR system, the margin of appreciation is essential to strike a balance between a state's sovereignty and its obligation to protect the human rights of individuals under the Convention. However, the margin of appreciation, while necessary, is not absolute and can be limited, especially in cases involving serious state interference with parental rights (such as family separation), always considering the guiding principle of the best interests of the child. Specifically, the ECtHR must always verify whether the state interference with family life was actually necessary, justified by 'relevant and sufficient reasons', and proportionate to the aim pursued (i.e., the protection of the child), taking into account factors such as the specific child protection measure, the strength of the reasons justifying it, the country's traditions regarding state intervention in family life, and evolving social attitudes in different member states regarding the interpretation of the scope of the margin of appreciation.

Nevertheless, the frequent use of the margin of appreciation by the ECtHR, in this area and beyond, raises critical questions and in some cases risks turning from a solution into a problem. This is because it is sometimes used by the Court in a "Pilates way", to avoid taking courageous but politically

⁴⁰ Regarding the controversial use of margin of appreciation by the ECtHR in matters concerning the religious education of children, see MONICA LUGATO, *The margin of appreciation and freedom of religion: Between treaty interpretation and subsidiarity*, "Journal of Catholic Legal Studies", 52, 2013, pages 49-70; DOMINIC MCGOLDRICK, *Religious Rights and the Margin of Appreciation*, in Petr Agha (ed.), *Human Rights Between Law and Politics. The Margin of Appreciation in Post-National Contexts*, Bloomsbury, London, 2017; MALCOM EVANS, PETER PETKOFF, *Marginal Neutrality. Neutrality and the Margin of Appreciation in the Jurisprudence of the European Court of Human Rights*, in JEROEN TEMPERMAN, T. JEREMY GUNN, MALCOM EVANS (eds.), *The European Court of Human Rights and the Freedom of Religion or Belief. The 25 Years since Kokkinakis*, Brill Nijhof, Leiden, 2019, pp. 128-152; MARÍA-JOSÉ VALERO-ESTARELLAS, *Neutrality, Margin of Appreciation and Religious Autonomy: Advancing Pluralism and Non-Discrimination in Strasbourg*, in *Revue du droit des religions*, 15, 2023, pp. 161-175.

Published online on 5 November 2025.

challenging decisions (i.e. to decide not to decide), in an area where the interests of individuals (parents and children) and the very principle of the best interests of the child necessarily end up being interpreted and applied through the distorting lens of religion (and the requirements linked to the different levels of recognition and protection of religious claims in individual member states).

The case of *Lautsi and Others v. Italy* can be considered the perfect example of this attitude and the risks associated with using the margin of appreciation in this area⁴¹. As is well known, the case concerned a complaint regarding the mandatory display of crucifixes in public school classrooms in Italy, which was deemed a violation of the principle of respect for parents' religious and philosophical beliefs, as set forth in Article 2 of Protocol No. 1⁴².

Ms Lautsi's appeal was initially upheld by the ECtHR⁴³. However, the decision was subsequently overturned by the Grand Chamber of the Court in 2011. According to the Grand Chamber, in particular, Article 2 of Protocol No. 1 to the ECHR does not prevent States from disseminating, through teaching or education, information or knowledge that is directly or indirectly religious or philosophical in nature and, consequently, does not authorize parents to oppose the inclusion of such teaching or education in the school curriculum. Furthermore, since it aims to safeguard the possibility of educational pluralism, Article 2 requires the State, in exercising its functions in the field of education and teaching, to ensure that the information or knowledge contained in the school curriculum is taught in an objective, critical and pluralistic manner, enabling students to develop a critical sense, especially in matters of religion, in a peaceful atmosphere, free from any form of proselytism and indoctrination. This is precisely the key point. For the Grand Chamber, the display of crucifixes in public school classrooms cannot be considered

⁴¹ See ECtHR, *Lautsi and Others v. Italy*, No. 30814/06, [GC], 18 March 2011 (Display of crucifixes in State-school classrooms: no violation of Article 2 of Protocol No. 1 to the ECHR).

⁴² The Lautsi case originated from the complaint of a Finnish citizen residing in Italy, Mrs. Soile Lautsi, that the display of the crucifix in the classroom of the state school attended by her two children violated, inter alia, her right to educate her children in accordance with her own philosophical convictions (Article 2 of Protocol No. 1 of the ECHR). Both Italian domestic courts (the Veneto Administrative Tribunal and the Council of State) held that the display of the crucifix on the wall was consistent with the constitutional principle of secularism, as formulated by the Italian Constitutional Court with judgement no. 203/1989. Indeed, according to the Italian Domestic Courts, crucifix must be considered not only a religious symbol but also the symbol of Italian identity and the Italian model of secularity, since in Italy the principles that are at the base of the idea of secularism cannot but have a religious origin.

⁴³ ECtHR, *Lautsi and Others v. Italy*, No. 30814/06, [Section II], 3 November 2009. The ECtHR held that everyone's right to educate their children according to their own ethical and religious beliefs had been violated, since in the exercise of a public function, such as education, Italy should have maintained a neutral stance (also to avoid infringing freedom of conscience), whereas – according to the Court – the display of Christ on the cross is a predominantly religious symbol (in contrast to non-believers) and a Christian symbol (in contrast to people who profess other faiths). Indeed, it must be considered a strong religious symbol, «emotionally disturbing for pupils professing a religion other than Christianity or professing no religion at all».

Published online on 5 November 2025.

indoctrination of students, as it is an essentially passive symbol that cannot be said to have an influence on students comparable to that of teaching or participation in religious activities. Therefore, its presence in state schools does not violate parents' right to educate and instruct their children according to their own religious and philosophical beliefs. Furthermore, although the presence of the crucifix certainly gives greater visibility to Christianity, the effects of such visibility must be relativized in a school system that guarantees truly pluralistic teaching. Therefore, the decision not to remove this religious symbol from classrooms falls within the margin of appreciation available to the State in the exercise of its functions in the field of education and teaching and does not violate Article 2 of Protocol No. 1 to the ECHR.

Despite the authority of this position, it seems difficult to deny that the crucifix is a symbol of a specific religion, Christianity, displayed in a manner that is probably inappropriate in classrooms and other public places in a state that has no official religion and proclaims itself to be secular (committing itself to allowing the coexistence of different faiths, cultures and traditions within it, in equality of freedom⁴⁴ : Italian Constitutional Court, No. 440/1995), and which today, starting with the school environment, is proving to be increasingly multicultural and interreligious.

In this case, therefore, the “Pilates way” use of the margin of appreciation allowed the ECtHR to avoid entering the merits of the Italian state's position on the recognition of the public role of religion, with a decision that appears to be political rather than legal in nature. This is to the detriment of the rights guaranteed by the ECHR to parents and children regarding religious or non-religious education, sacrificed on the altar of the “Raison d'état”.

6. Concluding remarks

Religious beliefs are a powerful force in raising kids, offering both potential benefits and challenges. Understanding the different ways religion can influence parenting and child development is key to promoting healthy individuals who are well-integrated into society. In this regard, open and impartial communication between parents and children about religious education is also important, especially during a child's development and even more so during adolescence, when children begin to reach a level of maturity that allows them to make informed choices. Parents' decisions should always prioritize the well-being and development of the child, even when it comes to religious beliefs and practices. If this

⁴⁴ See ITALIAN CONSTITUTIONAL COURT, Judgment No. 440/1995, 18 October 1995.

Published online on 5 November 2025.

does not happen and the way in which religious beliefs translate into parenting practices has a significant impact on children, it becomes the responsibility of the state to intervene to safeguard the best interests of the child. On this point, despite the margin of appreciation granted to individual states, which sometimes constitutes the tool used for “Pilates way” decisions, the ECtHR has a firm conviction, which must, however, be translated into clear and consistent statements, avoiding artificially privileging formalism to the detriment of substance, which must always be identified in the best interests of the child.

A large, faint, stylized logo for 'diritto & religio' is positioned in the lower half of the page. It features a large, light green 'd' and 'r' followed by the text 'diritto & religio' in a serif font.