...

THE FACTS

The four applicants are Mr Fritz Konrad, a Swiss and German national born in 1951, Mrs Marianna Konrad, a Swiss national born in 1956, and their children, Rebekka, a Swiss and German national born in 1992, and Josua, a Swiss and German national born in 1993. They live in Herbolzheim (Germany) and were represented before the Court by Mr W. Roth and Mr R. Reichert, two lawyers practising in Bonn.

A. The circumstances of the case

The facts of the case, as submitted by the applicants, may be summarised as follows.

The applicants belong to a Christian community which is strongly attached to the Bible and reject the attendance of private or State schools for religious reasons. The applicant parents find that school education does not suit their beliefs since sex education is taught, mythical creatures such as witches and dwarfs appear in fairy tales during school lessons, and physical and psychological violence among pupils at school is on the increase.

They educate their children at home in accordance with the syllabus and materials of the "Philadelphia School", an institution based in Siegen which is not recognised as a private school by the State. The institution specialises in assisting devout Christian parents in educating their children at home. The school's syllabus contains both books and materials which are used by State or private schools and materials specially prepared to support the education of religious beliefs. Teaching by parents is supervised by staff trained by the Philadelphia School. The teaching is supplemented by occasional gatherings of parents, children and staff members.

The applicant parents applied for their children to be exempted from compulsory primary school attendance and for permission to educate them at home. The third and fourth applicants reached the age for compulsory school attendance in 1999 and 2000 respectively. At present, they do not attend a private or State school.

On 28 August 2000 the Offenburg Education Office (*Staatliches Schulamt Offenburg*) rejected the application pursuant to section 72(1), in conjunction with section 76(2), of the Baden-Württemberg School Act (*Schulgesetz Baden-Württemberg*). The Freiburg Regional Education Office (*Oberschulamt Freiburg*) dismissed an objection by the applicants on 30 October 2000.

On 11 July 2001 the Freiburg Administrative Court dismissed a request by the applicants for exemption from compulsory primary-school attendance. The court noted that the Basic Law granted the parents both freedom of religion and the right to educate their children with regard to religious and philosophical convictions, which also included the negative aspect of keeping their children away from convictions which would be harmful in their opinion. That freedom, however, was restricted by the State's obligation to provide education and tuition. Hence compulsory schooling was not a matter for the parents' discretion. The applicant parents' wish to let their children grow up in a "protected area" at home without outside interference could not take priority over compulsory school attendance. Even if the children could be sufficiently educated at home, the State's obligation to provide education under the Basic Law would not be met if the children had no contact with other children. Attending a primary school, with children from all backgrounds, would enable the children both to gain their first experiences of society and to acquire social skills. Neither would be possible if the parents were authorised to educate the children at home, in particular because the applicant parents had openly stated that they wished to avoid their children having regular contact with other children. The court noted that the State's obligation to educate would also further the children's interests and served the protection of their personal rights. Because of their young age, the applicant children were unable to foresee the consequences of their parents' decision to opt for home education. Therefore, they could hardly be expected to make an autonomous decision for themselves. Moreover, the applicant parents' right to educate their children would not be undermined by compulsory school attendance as the parents could educate their children before and after school, as well as at weekends. They were also free to send their children to a denominational school, which would possibly be more sensitive as to sex education than a State school, although the court questioned whether the issue of sex education would be of any relevance in a primary school's syllabus.

On 18 June 2002 the Baden-Württemberg Administrative Court of Appeal dismissed an appeal by the applicants. It found that, even though the applicant parents' right to educate their children included religious education, they were not exclusively entitled under the Basic Law to educate their children. The State's constitutional obligation to provide the children with an education was on an equal footing with the parents' right. The court stressed that the decisive point was not whether home education was equally as effective as primary school education, but that compulsory school attendance required children from all backgrounds in society to gather together. Parents could not obtain an exemption from compulsory school attendance for their children if they disagreed with the content of particular parts of the syllabus, even if their disagreement was religiously motivated. The applicant parents could not be permitted to keep their

children away from school and the influences of other children. Schools represented society, and it was in the children's interests to become part of that society. The parents' right to provide education did not go so far as to deprive their children of that experience. Parents could require the State to take positive measures in order to prevent their children being ill-treated by other children. The applicant parents had not, however, argued that the school authorities in Baden-Württemberg would fail to do so. Neither had the parents sufficiently argued that the applicant children would be exposed to religious influence which was opposed to their own views. The school's obligation of religious neutrality would prevent the applicant children from any indoctrination against their will. In so far as the applicants complained that the school's syllabus was too scientific and denied any divine influence on the creation and the history of the world, the court found that freedom of religion did not entail the freedom not to deal with any possible conflicts between science and religion. The "mythical figures" such as dwarfs or witches which the applicants considered to represent occultism were characters in fairy tales and children's books which were well known to all children. At school, they would be introduced to children as fictional characters. Hence the State did not promote superstition through its schools.

On 7 January 2003 the Federal Administrative Court dismissed an application by the applicants for leave to appeal on points of law.

On 29 April 2003 the Federal Constitutional Court refused to consider a constitutional complaint by the applicants because it had already dealt with the decisive constitutional issues in its settled case-law. It pointed out that the administrative courts' decisions had neither violated the applicant parents' right to educate their children nor the applicants' freedom of religion. The balance of interests between the applicants' rights on the one hand and the State's obligation to provide school education on the other did not require exemption from compulsory school attendance. The Federal Constitutional Court stressed that the State's obligation to provide education did not only concern the acquisition of knowledge, but also the education of responsible citizens to participate in a democratic and pluralistic society. To hold that home education under the State's supervision was not equally effective for pursuing these aims was at least not erroneous. The acquisition of social skills in dealing with other persons who had different views and in holding an opinion which differed from the views of the majority was only possible through regular contact with society. Everyday experience with other children based on regular school attendance was a more effective means of achieving that aim. The Federal Constitutional Court found that the interferences with the applicants' fundamental rights were also proportionate given the general interest of society in avoiding the emergence of parallel societies based on separate philosophical convictions. Moreover, society also had an interest in the integration of minorities. Such integration required not only that minorities with separate religious or

philosophical views should not be excluded, but also that they should not exclude themselves. Therefore, the exercise and practising of tolerance in primary schools was an important goal. Lastly, the Federal Constitutional Court considered that the interference was reasonable as the parents still had the possibility of educating their children themselves outside school hours, and the school system was obliged to be considerate towards dissenting religious beliefs.

B. Relevant domestic law

1. The Basic Law

The relevant provisions of the Basic Law are the following:

Article 6

"1. Marriage and the family shall enjoy the special protection of the State.

2. The care and upbringing of children is the natural right of parents and a duty primarily incumbent upon them. The State shall supervise them in the performance of this duty.

..."

Article 7

"1. The entire school system shall be under the supervision of the State.

2. Parents and guardians shall have the right to decide whether children should receive religious instruction.

3. Religious instruction shall form part of the regular curriculum in State schools, with the exception of non-denominational schools. Without prejudice to the State's right of supervision, religious instruction shall be given in accordance with the tenets of the religious community concerned. Teachers may not be obliged to give religious instruction against their will.

4. The right to establish private schools shall be guaranteed. Private schools that serve as alternatives to State schools shall require the approval of the State and shall be subject to the laws of the *Länder*. Such approval shall be given where private schools are not inferior to State schools in terms of their educational aims, their facilities, or the professional training of their teaching staff, and where segregation of pupils according to the means of their parents will not be encouraged thereby. Approval shall be withheld if the economic and legal position of the teaching staff is not adequately assured.

..."

2. Constitution of the Land *of Baden-Württemberg*

Article 14 § 1 of the Constitution of the *Land* of Baden-Württemberg provides:

"School attendance is compulsory."

3. The Baden-Württemberg School Act

The relevant provisions of the Baden-Württemberg School Act are the following:

Section 72 – Compulsory school attendance: pupils' obligations

"(1) Compulsory school attendance shall apply to all children and juveniles who are permanently resident ... in the *Land* of Baden-Württemberg.

...

(4) Pupils are required to attend a German school. The school supervisory authority shall decide on any exemption.

..."

Section 76 – Compliance with compulsory school attendance

"(1) All children and juveniles are obliged to attend schools within the meaning of section 72(2)2 of this Act, unless provision is otherwise made for their education and tuition. Alternative tuition instead of primary-school attendance may only be granted in exceptional circumstances by the school supervisory authority.

..."

COMPLAINTS

The applicants complained under Articles 8 and 9 of the Convention and Article 2 of Protocol No. 1 of the refusal to allow the applicant parents to educate their children at home in conformity with their own religious beliefs, and of the subsequent decisions by the German courts confirming that refusal. Moreover, they relied on all three provisions in conjunction with Article 14.

THE LAW

1. The applicant parents alleged that the refusal of permission to educate their children at home violated their right to ensure an education for their children in conformity with their own religious convictions as guaranteed by Article 2 of Protocol No. 1, which provides:

"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."

The applicant parents submitted that it was their duty to educate their children in accordance with the Bible and Christian values. They inferred

from numerous quotations from the Bible that their children's education was an obligation on them which could not easily be transferred to third persons. They submitted that, by teaching their children at home, they were obeying a divine order. Their children's attendance of a primary school would inevitably lead to grave conflicts with their personal beliefs as far as syllabus and teaching methods were concerned. Compulsory school attendance would therefore severely endanger their children's religious education, especially regarding sex education and concentration training (as provided in some schools), which in their view amounted to esoteric exercises. The State's obligation of religious neutrality would render it impossible to educate their children in a State school in accordance with the applicant parents' beliefs. As the applicants belonged to a religious minority, there were no private schools which suited their convictions. Moreover, the applicants pointed out that home education was permitted in the United States, Canada, Switzerland, Austria and Norway. Countries such as Denmark, Finland and Ireland provided for home education in their constitution.

The Court observes that the applicant parents' complaints mainly relate to the second sentence of Article 2 of Protocol No. 1. This provision recognises the role of the State in education as well as the right of parents, who are entitled to respect for their religious and philosophical convictions in the delivery of education and teaching to their children. It aims at safeguarding pluralism in education, which is essential for the preservation of the "democratic society" as conceived by the Convention (see *B.N. and S.N. v. Sweden*, no. 17678/91, Commission decision of 30 June 1993, unreported). In view of the power of the modern State, it is above all through State teaching that this aim must be realised (see *Kjeldsen, Busk Madsen and Pedersen v. Denmark*, 7 December 1976, § 50, Series A no. 23).

Furthermore, the second sentence of Article 2 must be read together with the first, which enshrines the right of everyone to education. It is on to this fundamental right that is grafted the right of parents to respect for their religious and philosophical convictions (see *B.N. and S.N. v. Sweden*, cited above). Therefore, respect is only due to convictions on the part of the parents which do not conflict with the child's right to education, the whole of Article 2 of Protocol No. 1 being dominated by its first sentence (see *Campbell and Cosans v. the United Kingdom*, 25 February 1982, § 36, Series A no. 48). This means that parents may not refuse a child's right to education on the basis of their convictions (see *B.N. and S.N. v. Sweden*, cited above, and *Leuffen v. Germany*, no. 19844/92, Commission decision of 9 July 1992, unreported).

The Court notes that, in the present case, the applicant parents also filed their complaints on behalf of the applicant children. Therefore, it cannot be formally said that the applicant parents are seeking to impose their religious

convictions against their children's will. Nevertheless, the Court agrees with the finding of the Freiburg Administrative Court that the applicant children were unable to foresee the consequences of their parents' decision to opt for home education because of their young age. As it would be very difficult for the applicant children to take an autonomous decision for themselves at that age, the Court considers that the above principles apply to the present case.

The right to education as enshrined in Article 2 of Protocol No. 1 by its very nature calls for regulation by the State, regulation which may vary in time and place according to the needs and resources of the community and of individuals (see the *Case "relating to certain aspects of the laws on the use of languages in education in Belgium" v. Belgium*, 23 July 1968, p. 32, § 5, Series A no. 6). Therefore, Article 2 of Protocol No. 1 implies the possibility for the State to establish compulsory schooling, be it in State schools or through private tuition of a satisfactory standard (see *Family H. v. the United Kingdom*, no. 10233/83, Commission decision of 6 March 1984, Decisions and Reports 37, p. 105, at p. 108; *B.N. and S.N. v. Sweden*, cited above; and *Leuffen*, cited above). The Court observes in this connection that there appears to be no consensus among the Contracting States with regard to compulsory attendance of primary schools. While some countries permit home education, other States provide for compulsory attendance of State or private schools.

In the present case, the Court notes that the German authorities and courts have carefully reasoned their decisions and mainly stressed the fact that not only the acquisition of knowledge but also integration into and first experiences of society are important goals in primary-school education. The German courts found that those objectives could not be met to the same extent by home education, even if it allowed children to acquire the same standard of knowledge as provided by primary-school education. The Court considers that this presumption is not erroneous and falls within the Contracting States' margin of appreciation in setting up and interpreting rules for their education systems. The Federal Constitutional Court stressed the general interest of society in avoiding the emergence of parallel societies based on separate philosophical convictions and the importance of integrating minorities into society. The Court regards this as being in accordance with its own case-law on the importance of pluralism for democracy (see, *mutatis mutandis*, *Refah Partisi (the Welfare Party) and Others v. Turkey* [GC], nos. 41340/98, 41342/98, 41343/98 and 41344/98, § 89, ECHR 2003-II).

Moreover, the German courts pointed to the fact that the applicant parents were free to educate their children after school and at weekends. Therefore, the parents' right to education in conformity with their religious convictions is not restricted in a disproportionate manner. Compulsory primary-school attendance does not deprive the applicant parents of their right to "exercise with regard to their children natural parental functions as

educators, or to guide their children on a path in line with the parents' own religious or philosophical convictions" (see, *mutatis mutandis*, *Kjeldsen, Busk Madsen and Pedersen*, cited above, § 54, and *Efstratiou v. Greece*, 18 December 1996, § 32, *Reports of Judgments and Decisions* 1996-VI).

It follows that this complaint must be rejected as manifestly ill-founded, in accordance with Article 35 §§ 3 and 4 of the Convention.

2. The applicants also complained that the refusal to allow the applicant parents to educate their children in accordance with their religious beliefs amounted to a violation of their respect to private life under Article 8 of the Convention, which provides:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

Moreover, the applicants complained of a violation of their freedom of thought, conscience and religion, as guaranteed by Article 9 of the Convention, which provides:

> "1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.
>
> 2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others."

The Court finds that any interference with the applicants' rights under either of these provisions would, for the reasons stated above, be justified under Article 8 § 2 and Article 9 § 2 respectively as being provided for by law and necessary in a democratic society in view of the public interest in ensuring the children's education.

Therefore, this part of the application is likewise manifestly ill-founded in accordance with Article 35 §§ 3 and 4 of the Convention.

3. The applicants further complained of a violation of Article 14 of the Convention taken in conjunction with Articles 8 and 9 and Article 2 of Protocol No. 1. Article 14 provides:

> "The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

The applicants submitted that they were being discriminated against in relation to others who held different religious convictions which did not

conflict with compulsory school attendance (Article 14 of the Convention taken in conjunction with Article 9 and Article 2 of Protocol No. 1). They also submitted that they were being discriminated against because the applicant children were forced to attend a State school which did not provide religious education. Having regard to its conclusions concerning Article 9 and Article 2 of Protocol No. 1, the Court finds that no separate issue arises in conjunction with Article 14.

Moreover, the applicants submitted that they were being discriminated against in relation to families whose children had been exempted from compulsory school attendance on the grounds that the parents worked abroad or were not settled because their professional life required them to move around the country (Article 14 of the Convention taken in conjunction with Article 8).

The Court reiterates that, for the purposes of Article 14 of the Convention, a difference in treatment between persons in analogous or relevantly similar positions is discriminatory if it has no objective and reasonable justification, that is, if it does not pursue a legitimate aim or if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be realised. Moreover, the Contracting States enjoy a margin of appreciation in assessing whether and to what extent differences in otherwise similar situations justify different treatment (see *Camp and Bourimi v. the Netherlands*, no. 28369/95, § 37, ECHR 2000-X).

The Court notes that there exists a difference of treatment between the applicant children and other children who have obtained an exemption from compulsory school attendance "in exceptional circumstances" as provided for by section 76(1) of the Baden-Württemberg School Act or equivalent provisions in other *Länder*. However, the applicants submitted that such "exceptional circumstances" had been recognised by the school supervisory authorities only in cases in which children were physically unfit to attend school or in which the parents had to move around the country for professional reasons. Such exemptions were granted by the school supervisory authorities because the limited feasibility of school attendance would have caused undue hardship for those children. Those exemptions were hence granted for merely practical reasons, whereas the applicants sought to obtain an exemption for religious purposes. Therefore, the Court finds that the above distinction justifies a difference of treatment.

It follows that this complaint must also be rejected as manifestly ill-founded in accordance with Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court unanimously

Declares the application inadmissible.