CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

COUR EUROPÉENNE DES DROITS DE L'HOMME
EUROPEAN COURT OF HUMAN RIGHTS

FIRST SECTION

FINAL DECISION

AS TO THE ADMISSIBILITY OF

Application no. 15472/02
by Ingebjørg FOLGERØ and Others
against Norway

The European Court of Human Rights (First Section), sitting on 14 February 2006 as a Chamber composed of:

Mr C.L. ROZAKIS, *President*,
Mr L. LOUCAIDES,
Mrs F. TULKENS,
Mrs E. STEINER,
Mr K. HAJIYEV,
Mr D. SPIELMANN,
Mr S.E. JEBENS, *judges*,
and Mr S. NIELSEN, *Section Registrar*,

Having regard to the above application lodged on 15 February 2002,

Having regard to the partial decision of 26 October 2004,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicants,

Having deliberated, decides as follows:

THE FACTS

The applicants are parents, who are members of the Norwegian Humanist Association (*Human-Etisk Forbund*), and their children, who were primary school pupils at the time of the events complained of in the present case: Mrs Ingebjørg Folgerø (1960), Mr Geir Tyberø (1956) and their son Gaute A. Tyberø (1987); Mrs Gro Larsen (1966), Mr Arne Nytræ (1963) and their two sons Adrian Nytræ (1987) and Colin Nytræ (1990); Mrs Carolyn Midsem (1953) and her son, Eivind T. Fosse (1987). Initially the Association had also joined the application, but it subsequently withdrew. The applicants were represented before the Court by Mr L. Stavrum, a lawyer practising in Lillehammer, Norway. The Government were represented by their Agent, Ms E. Holmedal, Counsel, Attorney General's Office (Civil Matters).

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

A. Factual background to the present case

Norway has a State religion and a State Church, of which 86% of the population are members. Article 2 of the Constitution provides:

> "Everyone residing in the Kingdom shall enjoy freedom of religion.
>
> The Evangelical Lutheran Religion remains the State's official religion. Residents who subscribe to it are obliged to educate their children likewise."

Instruction in the Christian faith has been part of the Norwegian school curriculum since 1739. From 1889 onwards members of religious communities other than the Church of Norway were entitled to be exempted in whole or in part from the teaching of the Christian faith.

1. The former Compulsory School Act 1969

In connection with the enactment of the former Compulsory School Act 1969 (*lov om grunnskolen*, 13 June 1969 no. 24, hereafter referred to as "the 1969 Act"), Parliament decided that teaching of the Christian faith should no longer be a part of the baptismal instruction of the Church but should be aimed at teaching the main contents of the history of the Bible, the principal events in Church history and the basic knowledge for children of the Evangelical Lutheran Confession (section 7 (4) of the Act).

Under the "Christian object clause" (*den kristne formålsparagraf*) in section 1 of the Act:

> "Primary school is, with the understanding and co-operation of the home, to assist in giving pupils a Christian and moral education and in developing their abilities, spiritual as well as physical, and giving them good general knowledge so that they can become useful and independent human beings at home and in society.

> School shall promote spiritual freedom and tolerance, and place emphasis on creating good conditions for co-operation between teachers and pupils and between the school and the home."

Teachers were required to teach in accordance with the Evangelical Lutheran Confession (section 18(3), added in 1971).

In accordance with section 12 (6) of the 1969 Act, children of parents who were not members of the Church of Norway were entitled, upon the parents' request, to be exempted in whole or in part from lessons on the Christian faith. Pupils who had been exempted could be offered alternative lessons in philosophy.

2. Reform

Between 1993 and 1997 a process of reform of compulsory primary and secondary school took place. In the spring of 1993 Parliament decided to bring the school starting age forward from the age of 7 to 6 and the next spring it extended compulsory school attendance from 9 to 10 years. A new curriculum was presented to Parliament. The majority of the Parliamentary Committee for Church Affairs, Education and Research proposed that Christianity, other religions and philosophy be taught together. It emphasised the importance of ensuring an open and inclusive school environment, irrespective of the pupils' social background, religious creed, nationality, sex, ethnic group or functional ability. School should be a meeting place for all views. Pupils having different religious and philosophical convictions should meet others and gain knowledge about each other's thoughts and traditions. School should not be an arena for preaching or missionary activities. It was noted that since 1969 teaching of the Christian faith had ceased to be part of the State Church's baptismal instruction. The subject should give knowledge and insight but should not be a tool for religious preaching. The Committee's majority further considered that guidelines for exemptions should be worked out in order to achieve a uniform practice and that minority groups should be consulted. Exemptions should be limited to parts of the subject, especially material of a confessional character and participation in rituals.

Subsequently, a white paper (*St.meld. nr. 14* for 1995-1996) on Christianity, Religion and Philosophy (*kristendomskunnskap med religions- og livssynsorientering*, hereafter referred to as "the *KRL* subject") was presented, in which the Ministry of Church Affairs, Education and Research indicated the following guidelines for making exemptions:

> "No pupil should feel that being exempted is unpleasant or stigmatising;
>
> No pupil should be pressurised to stand out as a representative of a specific philosophy of life and the school should therefore display great caution in class or at the school in its handling of a request for exemption;

It should not be automatic for certain pupils to be exempted from certain parts of the syllabus;

If the circumstances lend themselves to it and the parents/pupil so wish, the background and reasons for an exemption can be taken up in the lessons.

An exemption does not mean a freedom to be ignorant...”

The majority of the above-mentioned parliamentary committee endorsed the curriculum in the main and pointed out that Christianity should form the central part of the subject (*Innst.s.nr 103* for 1995-1996). It further stated:

“The majority would also underline that the teaching should not be value neutral. The aim that the teaching should not be preaching should never be interpreted to mean that it should occur in a religious/ethical vacuum. All teaching and education in our primary schools shall take the school's object clause as a starting point and, within this subject, Christianity, other religions and philosophy shall be presented according to their own special features. The subject should place emphasis on the teaching of Christianity.”

A minority of one proposed that, for all primary school pupils, there should be a right to full exemption from the KRL subject and to alternative teaching.

In the course of preparing the amendments to the law, the Ministry commissioned Mr E. Møse, then a High Court Judge, to make an assessment of compulsory education in the KRL subject from the angle of Norway's obligations under public international law. In his report of 22 January 1997, he concluded:

“The object clause of the Primary School Act, whether taken alone or together with Article 2 of the Constitution and other special rules on the Church and schools, does not provide a basis for establishing that the teaching of Christianity under the new syllabus will of legal necessity become preaching, educative or influential in favour of the Evangelical Lutheran Faith. The legislature may choose to make provision for education in the form of preaching to pupils who are of this creed, but not to others. That would be inconsistent with our international obligations and Article 110C of the Constitution on the protection of human rights.

What emerges, from a legal point of view, from the somewhat unclear concept of “confessional basis”, is that a natural consequence of the State Church system is that the legislator lets instruction in religion or philosophy include the Evangelical Lutheran thoughts, not other forms of Christianity. The law on the new subject, which includes a part on Christianity, has opted for this. .... The solution has been opted for because the majority of the population in Norway is affiliated to this creed. It is evidently motivated by objective reasons. It cannot be ruled out by human rights treaties, provided that the teaching is otherwise pluralistic, neutral and objective.”

As regards the issue of exemption from the KRL subject, Mr Møse stated:

“In the situation as it emerges I find that a general right of exemption would be the safest option. This would mean that international review bodies would not undertake a closer examination of thorny questions that compulsory education raises. However, I

cannot say that a partial exemption would violate the conventions, provided that the operation of the system falls within the framework of the relevant treaty obligations. A lot would depend on the further legislative process and the manner of implementation of the subject."

Sections 7 and 13 of the 1969 Act were amended by an Act of 19 June 1997 (no. 83), with effect from 1 July 1997. The new provisions, plus an object clause similar to section 1 of the former 1969 Act, were subsequently included in respectively sections 2-4 and 1-2 of the Education Act 1998 (*Lov om grunnskolen og den videregående opplæring av 17. juli 1998 nr. 61*, hereafter referred to as "the 1998 Act"), which entered into force on 1 August 1999.

Section 1-2 (1) provided:

"The object of primary and lower secondary education shall be, in agreement and cooperation with the home, to help give pupils a Christian and moral upbringing, to develop their mental and physical abilities, and to give them good general knowledge so that they may become useful and independent human beings at home and in society."

Section 2-4 read:

"Instruction in Christianity, Religion and Philosophy shall

(i) transmit thorough knowledge of the Bible and Christianity as cultural heritage and the Evangelical Lutheran Faith;

(ii) transmit knowledge of other Christian communities;

(iii) transmit knowledge of other world religions and philosophies, ethical and philosophical subjects;

(iv) promote understanding and respect for Christian and humanist values; and

(v) promote understanding, respect and the ability to maintain a dialogue between people with different perceptions of beliefs and convictions.

Instruction on Christianity, Religion and Philosophy is an ordinary school subject, which should normally bring together all pupils. The subject shall not be taught in a preaching manner.

A person who teaches Christianity, Religion and Philosophy shall take as a starting point the object clause in section 1-2 and should present Christianity, the different religions and philosophy from the standpoint of their particular characteristics. The same pedagogical principles shall apply to the teaching of the different subjects.

A pupil shall, on the submission of a written parental note, be granted exemption from those parts of the teaching in the particular school concerned that they, from the point of view of their own religion or philosophy of life, consider as amounting to the practising of another religion or adherence to another philosophy of life. This may concern, *inter alia,* religious activities within or outside the classroom. In the event of a parental note requesting exemption, the school shall as far as possible seek to find solutions by facilitating differentiated teaching within the school curriculum."

From the drafting history it can be seen that the expression "religious activities" was meant to cover, for example, prayers, psalms, the learning of religious texts by heart and the participation in plays of a religious nature.

In accordance with a circular by the Ministry of 10 July 1997, a parental note to the school requesting exemption should contain reasons setting out what they considered amounted to practising another religion or adherence to another philosophy of life. The pupil should be granted an exemption after the parents had specified the reasons. If the request was rejected, the parents had a right of appeal to the State Education Office in the county concerned. The appeal was sent via the school, which then had an opportunity to alter its decision.

The requirement of giving reasons was further specified in a ministerial circular of 12 January 1998, according to which no reasons were required for making an exemption from clearly religious activities. Beyond that, with regard to matters falling outside the main rule for making exemptions, stricter requirements applied with respect to reasons.

In connection with the preparation of the KRL subject, associations representing minority convictions expressed strong objections: notably that the subject was dominated by Evangelical Lutheran Christianity and contained elements of preaching. The Norwegian Humanist Association commented, *inter alia,* that the subject had a confessional basis (*konfesjonsforankring*) and that the possibility foreseen for obtaining exemption from only parts of the subject was inadequate. At its national congress in May 1997 the Association decided to invite Parliament to reject the Government's proposal to limit the right of exemption.

From the autumn of 1997, the KRL subject was gradually introduced into the primary school curriculum, replacing the subject of Christianity and philosophy of life. During the school year 1999-2000, the subject was introduced at all levels.

3. Evaluations of the KRL subject

On 18 October 2000 the Ministry issued a press release about the completion of two evaluation reports on the KRL subject, one entitled Parents', pupils' and teachers' experiences with the KRL subject" (*Foreldres, elevers og læreres erfaringer med KRL-faget*), provided by *Norsk Lærerakademi,* the other entitled "A subject for every taste? An evaluation of the KRL subject" (*Et fag for enhever smak? En evaluering av KRL-faget*) by the *Høgskulen i Volda* and *Diaforsk*. Parliament had requested that a survey of the implementation of the exemption rules be prepared after a three-year period. Both reports concluded that the partial exemption arrangement was not working as intended and should therefore be thoroughly reviewed.

B. Judicial proceedings brought by some of the applicants

In the meantime, on 14 March 1998 the Norwegian Humanist Association, together with eight sets of parents, who were members of the Association and whose children went to primary school, brought proceedings before Oslo City Court (*byrett*) on account of administrative refusals of the parents' applications for full exemption from the teaching of the KRL subject. They claimed that the refusal of full exemption violated the parents' and the children's rights under Article 9 of the Convention and Article 2 of Protocol No. 1, taken on their own or in conjunction with Article 14 of the Convention. They also invoked, amongst other provisions, Articles 18 and 26 of the 1966 International Covenant on Civil and Political Rights and Article 13 § 3 of the 1966 International Covenant on Economic, Social and Cultural Rights.

By a judgment of 16 April 1999, the City Court rejected the State's objection that the Association lacked a legal interest and hence did not have legal standing. However, on the substantive issues arising the City Court found for the State and rejected the claim.

The Association and the parents appealed to the Borgarting High Court (*lagmannsrett*).

On 6 October 2000 the High Court delivered a judgment in which it upheld the City Court's judgment.

On a further appeal by the applicants, the Supreme Court (*Høyesterett*), by a judgment of 22 August 2001, unanimously dismissed the appeal in as far as it concerned the Association, on the ground that it lacked a legal interest sufficient to have standing in the case. In as far as it concerned the other plaintiffs, it unanimously rejected their appeal and upheld the High Court's judgment.

In his reasoning, approved in the main by the other four Justices sitting in the case, the first voting judge, Mr Justice Stang Lund, stated from the outset that "[the] case concerns the validity of the administrative decisions rejecting the parents' applications for full exemption for their children from the primary and secondary school (KRL) subject". He defined the issue to be determined as being "whether instruction in the [KRL] subject with a limited right to exemption [was] contrary to Norway's international legal obligations to protect, *inter alia*, freedom of religion and belief".

Thereafter, Mr Justice Stang Lund undertook an extensive analysis of the legislative history, the position under international human rights law, notably the relevant provisions and case-law of the European Convention and the 1966 International Covenant on Civil and Political Rights. He held that, if interpreted against this background, section 2-4(4) of the 1998 Act must be understood to the effect that pupils had a right to be exempted and that their parents had no obligation to let their children follow lessons on religion and philosophy regarded as preaching or indoctrinating in the sense

of those treaties. The children could therefore be absent from such teaching. The question as to how large a part of the syllabus would be affected in this way would have to be decided in each concrete case depending on how the teaching was planned and implemented. In the view of Mr Justice Stang Lund, the provision on exemption was not contrary to any requirements pertaining to religious freedom and parental rights.

Mr Justice Stang Lund further considered the parts of the school curriculum that, in the appellants' submission, gave preference to the Christian faith and influenced pupils to opt for Christianity. However, he observed, what mattered was that pupils gained understanding in the plurality of convictions and thoughts, and that the teaching did not present one faith as being superior to others. It ought to be acceptable, in the light of a Contracting State's history, culture and traditions, that one or more religions or philosophies of life be given a more prominent place than others. As to the appellants' objections to influencing pupils through the use of pictures, songs, drama, music and stories from the Bible and religious texts, Mr Justice Stang Lund found that it ought to be possible to impart neutrally to pupils the traditions and "means of transmitting knowledge" (*måte å formidle på*) of the various religions without running counter to international human rights law. The curriculum placed emphasis on openness, insight, respect and dialogue and on the promotion of understanding and tolerance in discussion on religious and moral issues and forbade preaching. Within the framework of the curriculum, the teaching of the KRL subject could be carried out without any conflict with the relevant provisions of international human rights law.

As to the appellants' argument that the school manuals, notably volumes 2, 3, 5, and 6 of *Bridges*, amounted to preaching and were capable of influencing the pupils, Mr Justice Stang Lund observed that, while several definitions of problems and formulations used in *Bridges* could be understood as if the Christian faith provided the answer to ethical and moral questions, no further information had been submitted to the Supreme Court as to how the teaching in relation to this material had been planned and implemented.

In this context Mr Justice Stang Lund noted that the appellants' lawsuit and appeal to the Supreme Court had been directed against the KRL subject and its implementation generally. The arguments and evidence adduced in relation to each decision to refuse full exemption had been aimed at highlighting how the subject functioned in general. The appellants had not gone closely into the validity of the individual decision. Because of the way the case had been presented, there was no ground for determining whether the teaching of the appellants' children had occurred in a manner which violated the relevant human rights treaties. The case concerned the validity of the decisions refusing full exemption from the KRL subject. The appellants had not shown it to be probable that the teaching had been

planned and carried out in a manner that, in accordance with these conventions, warranted exemption from all teaching of the subject in question.

Finally, Mr Justice Stang Lund reviewed the argument of discrimination. He observed that a right to exemption from all or parts of the compulsory education in the KRL subject would lead to differential treatment. Parents and pupils who wanted an exemption had to follow the syllabus carefully and seek an exemption when they found this necessary in order to preserve the children's and their own interests. While a requirement to provide detailed reasons might run counter to Articles 8 (private life) and Article 9 of the Convention, under the arrangement in issue a parental note had to be submitted indicating the wish for an exemption and from roughly which parts of the syllabus. The arrangement pursued a legitimate aim and did not entail a disproportionate interference, provided that the school facilitated the parents' task in keeping themselves informed about the teaching. Common compulsory education required a substantial effort to inform the parents. However, the appellants had not specifically dealt with the requirement to give reasons or the contents of the reasons that they had given for their requests for exemption. There was thus no basis for establishing discrimination invalidating the disputed refusals.

C. Petition by the parties to the above proceedings, and their children, to the Court and to the United Nations Human Rights Committee

On 15 February 2002 the applicant parents and children lodged their application under the Convention with the Court.

Subsequently, on 25 March 2002, four other sets of parents who had also been parties to the above-mentioned domestic proceedings, lodged together with their respective children a communication (no. 1155/2003) with the United Nations Human Rights Committee under the Protocol to the 1966 International Covenant on Civil and Political Rights.

On 3 November 2004 the Committee rejected the respondent State's objection that, as three other sets of parents had lodged a similar complaint before the Court, “the same matter” was already being examined by the latter. The Committee declared the communication admissible in so far as it concerned issues raised under Articles 17, 18 and 26 of the Covenant. As to the merits, the Committee expressed the view that the present framework of the KRL subject, including the regime of exemptions, as it had been implemented in respect of the complainants (“authors”), constituted a violation of Article 18 § 4 of the Covenant. In view of this finding, the Committee was of the opinion that no additional issue arose under other parts of Article 18 or Articles 17 and 26 of the Covenant. It gave the respondent State 90 days within which to provide “information about the

measures taken to give effect to the Committee's Views". Thereafter the Norwegian authorities decided to take certain measures.

COMPLAINTS

The applicants complained that the refusal of the competent domestic authorities to grant the children a full exemption from the KRL subject violated the applicants' rights under the Convention. The children's compulsory attendance at religious instruction unjustifiably interfered with their and their parents' right to freedom of conscience and religion under Article 9 of the Convention. It further violated the parents' right under Article 2 of Protocol No. 1, second sentence, to ensure such education and teaching in conformity with their own religious and philosophical convictions. Moreover, the manner in which the granting of an exemption operated required parents to describe in detail the parts of the education or teaching which conflicted with their own convictions, and thereby reveal aspects of their own philosophy of life, and had the effect of stigmatising the children or putting them in a situation as "go-betweens", in breach of their right to respect for private life under Article 8 of the Convention.

In addition, the above-mentioned inconveniences resulting from the limited possibilities and the modalities for requesting an exemption meant that non-Christian parents were faced with a greater burden than Christian parents who had no reason for seeking an exemption from the KRL subject, which was designed in accordance with the premises of the majority. In their view this amounted to discrimination. Thus, in the applicants' submission, there had also been a violation of Articles 8 and 9 of the Convention and Article 2 of Protocol No. 1, taken together with Article 14 of the Convention.

THE LAW

A. Introduction

The Court reiterates from the outset that, in its partial decision on admissibility of 26 October 2004, it struck the application out of its list of cases in so far as the Norwegian Humanist Association was concerned and declared the application inadmissible in respect of the children and the parents' complaints about the possibilities and modalities for obtaining a partial exemption from the KRL subject.

In this context the Court further considered the issue whether - having regard to the scope of the case before the Norwegian Supreme Court and to the petitions brought by certain parties to the same national proceedings before the United Nations Human Rights Committee in Geneva under the Protocol to the 1966 International Covenant on Civil and Political Rights - it was prevented from dealing with the present application on the second alternative ground set out in Article 35 § 2(b) of the Convention. However, the Court did not find it necessary then to determine this question and adjourned it to a future examination together with the substance of the applicants' complaints. At this stage, it is the first issue to be determined.

B. Whether the application is inadmissible under Article 35 § 2(b) of the Convention

Article 35 § 2(b) of the Convention reads:

> " The Court shall not deal with any application submitted under Article 34 that
>
> ...
>
> (b) is substantially the same as a matter that has already been examined by the Court or has already been submitted to another procedure of international investigation or settlement and contains no relevant new information."

1. Submissions of the parties

(i) The applicants

The applicants disputed the Government's contention that the same matter was being examined under another procedure of international investigation or settlement. Although four other sets of parents had lodged similar complaints with the Human Rights Committee regarding the case of their children, that was not "the same matter" within the meaning of Article 35 § 2(b) of the Convention. They argued that, even though the applications concerned the same violation and the national courts had dealt with it as one single case in one judgment, the fact that they had been brought by different individuals meant that it could not be viewed as "the same matter". Each set of parents' case had been pleaded separately in the domestic proceedings. Their claims had related to separate administrative decisions taken on the respective parties' application for an exemption from the tuition provided by each separate school. All the cases had been presented individually, although information on the general background history, the legal situation and general views on the contents of the new legislation had been presented collectively. The fact that the parents shared the same opinion on the new subject and the modalities for obtaining an exemption from it could not disqualify their individual claims for exemption

for their children. It was essential that, although presented jointly, their cases and claims were separate. Those parents who had opted to petition the Human Rights Committee had individual cases with a different emphasis and different arguments. The issues raised before the latter were not the same as those before the Court and related to provisions that were interpreted differently by the Committee and the Court respectively.

(ii) The Government

The Government argued that, before the domestic courts, the applicants' complaints regarding full exemption from the KRL subject had been adjudicated in a single case together with identical claims from four other sets of parents. Before the Supreme Court and the lower courts, all the plaintiffs had been represented by the same lawyer (Mr L. Stavrum) and had all made identical claims. Mr Stavrum had made one single presentation on behalf of all parties, and no attempts had been made to individualize the cases of the different parties. Accordingly, the claims had been adjudicated as one by the domestic courts, which had passed single judgments in which all the petitioners' claims had been dealt with as a whole.

Despite having pleaded their cases jointly before the domestic courts, the parties had opted to lodge an application with the European Court in Strasbourg and a petition with the Human Rights Committee in Geneva on 15 February and 25 March 2002 respectively. The complaints made to the respective institutions concerned substantially the same matters, the only difference being the identity of the applicants. The essential parts of their complaints were the same, word by word. Thus, it seemed clear that the applicants were still arguing one unified case, but now at two venues.

Moreover, it should be noted that all the applications had targeted the KRL subject in general, thus securing that a finding of a violation either by the European Court or by the Human Rights Committee would in fact be in favour of all the applicants, regardless of which proceedings they had been party to. In this respect, the Government referred to the judgment of the Supreme Court which clearly conveyed the finding that the case concerned the KRL subject in general, not the applicants' individual experiences.

The Government further pointed out that it was not clear from the wording of Article 35 § 2(b) whether it was the situation upon the lodging of the application or that upon the examination of admissibility which was decisive. When the application was lodged under the Convention, the same matter had not already been submitted to the Human Rights Committee. On 30 January 2003 the latter had requested the Government to submit their observations on the admissibility and merits of the communication, which they had filed on 21 November 2003. Arguably, therefore, one could consider that “the same matter” had already been submitted to another procedure of international investigation and was being examined under another procedure.

2. Assessment by the Court

The Court observes that the applicants before the Court and the "authors" before the UN Committee all complained, at the outcome of the same national proceedings to which they had all been parties, about the absence of a possibility under Norwegian law to obtain a full exemption for their children from the KRL subject. However, according to principles established in the Convention case-law, if the complainants before the two institutions are not identical (see *Council of Civil Service Unions v. the United Kingdom*, no. 11603/85, Commission decision of 29 January 1987, *Decisions and Reports* 50, pp. 236-37; *Peltonen v. Finland*, no. 19583/92, DR 80-A, p. 43; *cf. Calcerrada Fornieles and Cabeza Mato v. Spain*, no. 17512/90, decision of 6 July 1992, DR 73, p. 214, and *Miguel Cereceda Martin and 22 Others against Spain* (dec.) no. 16358/90, 12 October 1992; see also *Smirnova v. Russia*, (dec.) nos. 46133/99 and 48183/99, 3 October 2002), the "application" to the Court cannot be considered as being "substantially the same as a matter that has ... been submitted" for instance to the UN Committee (see also the somewhat stricter wording of the French version of this provision: "*elle [la_requête] est essentiellement la même qu'une requête ... soumise à"* etc. – emphasis added). Notwithstanding the common features between the application lodged under the Convention in Strasbourg and the communication filed under the UN Covenant in Geneva, the Court does not find that making an exception from this principle would be justified in the instant case.

It follows that the Government's request to the Court to declare the application inadmissible under Article 35 § 2(b) of the Convention must be rejected.

C. Complaint under Article 9 of the Convention and Article 2, second sentence, of Protocol No. 1

1. Submissions of the parties

(i) The applicants

The applicants maintained that the KRL subject was neither objective, nor critical nor pluralistic for the purposes of the criteria established by the Court in its interpretation of Article 2 of Protocol No. 1 in its *Kjeldsen, Busk Madsen and Pedersen* judgment. In this context they also referred to the criteria of "neutral and objective" enunciated by the UN Committee in the *Hartikainen v. Finland* case in relation to the corresponding provision in Article 18 § 4 of the International Covenant on Civil and Political Rights. The main intention being to strengthen the pupils' religious identity, the legal framework with a Christian object clause, an instruction plan that fully

adopted a religious outlook and praised the Christian belief and tradition together with textbooks that contained traditional Christian preaching in sum clearly indicated that the instruction was not objective.

The issue whether the contested Norwegian primary school subject constituted a violation of the relevant human rights standards on freedom of religion, parental rights, freedom of privacy and prohibition of discrimination ought to be seen in the broader context of a society with an extreme Christian predominance. Norway had a State religion, a State Church, with constitutional prerogatives being afforded to the Christian (Evangelical-Lutheran) faith. There was a Christian object clause for State schools and preschools. There were State Church priests in the armed forces, prisons, universities and hospitals. There were daily Christian devotions and services in State broadcasting etc. No less than 86% of the population belonged to the State Church, the Church of Norway.

Nevertheless, the right to freedom of religion for non-Christians had been taken care of in different ways, *inter alia*, by an exemption arrangement from the previous Christian Knowledge subject in state schools. This right to a general exemption – which had been enjoyed for more than 150 years – had been repealed when the KRL subject was introduced in 1997. One of the intentions of the Government was to have all pupils together in the classroom when important issues like the combating of prejudice and discrimination, better understanding of different backgrounds etc. were taught.

The applicants did not disagree with the general intention to promote intercultural dialogue – quite the contrary; they strongly agreed with many of the very fine aims expressed by the Government upon establishing the new subject. The problem was that the KRL subject simply did not achieve those aims, unlike the "philosophy of life" subject which the applicants favoured.

Referring to the mention of religious activities in the rule on partial exemption in section 2-4 of the 1998 Act, the applicants found it hard to understand how this could be reconciled with the requirements that the teaching be "objective and neutral" or even "pluralistic and critical".

A cornerstone in the partial exemption arrangement was the separation between normative and descriptive knowledge. It presupposed that one could "learn" the text (prayers, psalms, Biblical stories, statements of belief etc.) without being subjected mentally to what constituted or might constitute unwanted influence or indoctrination. The parents in these applications had in their written testimonies explained how this separation did not function with respect to their children. Thus, partial exemption had not been a possible option for them.

As admitted by the Government and mentioned by the Supreme Court, the relevant textbooks contained parts that could be conceived as professing Christianity. The textbooks had not been formally designated as part of the

subject's legal framework but had official status by having been controlled and authorised by an official state agency, the Norwegian Textbook Agency (*Norsk Læremiddelsentral*).

The applicants disputed the contention that the KRL subject involved only a few activities that could be perceived as being of a religious nature. The curriculum, the textbooks that were used in schools and all the information regarding the implementation of the instruction indicated that the main object of the subject – to strengthen the pupils' own Christian foundation – was also the main thread in the tuition. The principal intention behind the introduction of the KRL subject had been to secure the religious foundation for the majority of the pupils who adhered to Christianity. Otherwise the introductory provision in the 1998 Act would not have been formulated as an obligation for the teacher to provide tuition in accordance with the Christian object clause.

In the view of the applicants, the best way to combat prejudices and discrimination and to cater for mutual respect and tolerance, as was also an expressed aim for the new subject, was not by forcing people of non-Christian traditions and philosophies to participate in classes that predominantly featured the Christian religion. A better way would have been to maintain the former system with one subject for the majority of pupils coming from Christian families, including information on other philosophies of life, and one non-confessional subject based on common heritage, philosophy and a general history of religions and ethics etc. for the others. Even better would have been to refrain from the Christian superiority integral to the Norwegian school system and to create a common, neutral and objective religion- and philosophy of life subject without any form of religious activity or particular Christian privileges.

The partial exemption arrangement had not functioned for the applicants, who had tried this option but without it offering a practical remedy for them. The arrangement had implied exposure of their own philosophy of life – directly or indirectly – and had forced them to know in detail the elements of another philosophy of life (in order to be able to apply for an exemption). They had been heavily burdened by monitoring the tuition, passing on messages, giving reasons etc., and by frustration and stigmatization. The applicants had experienced how their children had suffered under the pressure of being different from other children, acting as “go-betweens” between the home and the school and living with conflicts of loyalty.

This being the case, the applicants had no option other than to demand full exemption, but had been denied this and had to comply with a partial exemption arrangement that did not operate in a manner that satisfied their rights.

(ii) The Government

The Government stressed that it followed from the Court's *Kjeldsen, Busk Madsen and Pedersen* judgment that no violation of Article 2 of Protocol No. 1 could be established on account of the absence of a right to full exemption from the KRL subject. As acknowledged in that judgment (paragraph 53), most knowledge-based education might raise issues of conviction. Parents were not even permitted to object to such education because, otherwise, "all institutionalised teaching would run the risk of proving impracticable." A right to full exemption as that claimed by the applicants here would even more clearly render institutionalised and mandatory teaching impracticable.

The Government submitted that, bearing in mind the Court's partial decision on admissibility of 26 October 2004 delimiting the scope of the case, there were two issues arising. A first issue was whether the KRL subject in general involved the imparting of information and knowledge in a manner which objectively might be perceived as indoctrinating, i.e. not objective, neutral and pluralistic. Should this be the case, a second issue would be whether a possibility to obtain a full exemption was the only viable alternative that would accommodate the parents' wishes. The Court's assessment of the KRL subject ought to be objective, rather than relying on the applicants' perceptions, and be based on the presumption that the KRL subject had been taught in conformity with existing regulations and guidelines. The applicants' perceptions of the KRL subject seemed to differ from what might objectively be inferred from the facts.

The KRL subject was designed to promote understanding, tolerance and respect among pupils of differing backgrounds, and to develop respect and understanding for one's own identity, the national history and values of Norway, and for other religions and philosophies of life. Accordingly, the KRL subject was an important measure for the fulfilment of Norway's obligations under Article 13(1) of the UN Covenant on Economic, Social and Cultural Rights and Article 29(1) of the UN Convention on the Rights of the Child.

Approximately half the curriculum pertained to the transmission of thorough knowledge of the Bible and Christianity as cultural heritage and the Evangelical Lutheran Faith, and of knowledge of other Christian communities. The other half, approximately, was devoted to the transmission of knowledge of other world religions and philosophies, ethical and philosophical subjects, the promotion of understanding and respect for Christian and humanist values, and of understanding, respect and the ability to maintain a dialogue between people with different perceptions of beliefs and convictions. Therefore, if the applicants – on behalf of their children – were to obtain full exemption, the children would be deprived of knowledge not only of Christianity but also of other religions and other philosophies of life and ethical and philosophical issues. In the view of the

Government, the mere fact that the subject provided knowledge of world religions, philosophies of life, and ethical and philosophical topics, and that its purpose was to promote understanding of humanist values and dialogues between people with differing views, should be sufficient to conclude that a clause allowing for full exemption could not be required under the Convention. Such a requirement would prevent all compulsory tuition concerning not only religions, but also other philosophies of life and ethical issues. It would be untenable and run counter to Norway's positive obligations under other international human rights treaties. On this ground alone it should be safe to conclude that parents could not claim a right under the Convention to a full exemption from KRL studies for their children.

The Government disagreed with the view implied by the applicants that the alleged lack of proportion could give rise to an issue under Article 9 of the Convention or Article 2 of Protocol No. 1. First of all, teaching pupils knowledge of Christianity could not in itself raise an issue under the Convention, as long as the instruction was carried out in an objective, pluralistic and neutral manner. Secondly, in current Norwegian society there were legitimate reasons for devoting more time to the knowledge of Christianity than to other religions and philosophies of life. These reasons had been set out in the *travaux préparatoires*, in the curriculum and in the subsequent evaluation of the KRL subject.

The Christian object clause in section 1-2 of the 1998 Act could not, in the Government's view, give rise to concerns under Article 9 of the Convention or Article 2 of Protocol No. 1. Firstly, the clause provided that it should apply only “in agreement and cooperation with the home”. Thus, any aid by schools in providing a Christian upbringing could only be given with the consent of the parents. Secondly, under section 3 of the Norwegian Human Rights Act, section 1-2 of the 1998 Act ought to be interpreted and applied in accordance with the international human rights treaties that had been incorporated into domestic law through the Human Rights Act. Consequently, the Christian object clause did not authorise preaching or indoctrination of any kind in Norwegian schools.

Even if the KRL subject had been intended to be taught in a pluralistic, objective and critical manner, this fact should not exclude activities that could be perceived by parents as being religious, such as excursions to churches, synagogues, mosques or temples or presence at rituals and religious services in various religious communities. Nor would it make it necessary to provide a possibility of obtaining full exemption from the KRL subject.

The problem of possible inclusion of activities that might run counter to the philosophical or religious convictions of parents had been given serious and significant attention by the Government in the deliberations on how to best design the KRL subject. Both the Government and the legislature recognised the parents' rights to ensure their children education and teaching

in conformity with their own religious and philosophical convictions, but at the same time acknowledged that society had a legitimate interest in and an obligation to enhance mutual respect, understanding and tolerance between pupils with different background as regards religion or philosophy of life. Also, the interests of the pupils themselves in developing and strengthening their own identity and in widening their horizons through gaining knowledge of new religions and philosophies of life were recognized.

The Convention safeguarded against indoctrination, not against acquiring knowledge: all information imparted through the school system would – irrespective of subject matter or class level – to some degree contribute to the development of the child and assist the child in making individual decisions. Likewise, even objective, critical and pluralistic information on religion and philosophies of life would provide a backdrop against which the individual child could form his or her own thoughts and identity. The mere fact that such information and knowledge might contribute to the development of the child was not in contravention with the Convention. On the contrary, the Convention should also ensure the child's right to education.

The *travaux préparatoires* clearly reflected that the chosen solution regarding exemptions outlined below was the result of a well-balanced compromise between these two interests. The dilemma these competing interests represented was solved through the establishment of three mechanisms that were intended to cater for the rights of parents to ensure their children education and teaching in conformity with their own religious and philosophical convictions: firstly and, perhaps, most importantly, the provision contained in section 2-4 (4) of the 1998 Act, which allowed for exemption from parts of the courses; secondly, differentiated teaching aimed at remedying problems encountered on the basis of parents' religious or philosophical convictions; thirdly, the parents' possibility of obtaining an administrative and/or judicial review if they perceived the education or teaching as not being in conformity with their convictions.

The Government also submitted that the applicants were not obliged to have their children in State schools. Individuals, groups of individuals, organisations, congregations or others could, upon application, establish their own schools or provide parental instruction in the home. Therefore, the Norwegian Humanist Association, or parents who did not want their children to participate in the KRL subject despite the partial exemption clause, were at liberty to avoid the problem by establishing alternative schools, either on their own or in cooperation with others of the same conviction. This was a realistic and viable alternative also as regards economic risk, as more than 85% of all expenditures connected to establishing and running private schools were publicly funded.

The applicants' affirmation that no Christian parents had applied for exemption or forwarded complaints with regards to the KRL subject was

unfounded. Although the Government kept no statistics on the cultural background of parents who sought exemption from the KRL subject, it emerged that several Christian communities had established private schools on account of their dissatisfaction with the tuition of Christianity provided in public sector schools. Several of these schools had been established after the KRL subject had been introduced in 1997. There were now 82 registered private schools with a philosophy-of-life background. Since 2001, 31 of all 36 applications concerned the establishment of new Christian private schools. It would therefore be safe to assume that certain parents with a Christian philosophy of life had been dissatisfied with certain elements of the KRL subject and had applied for exemptions.

2. Assessment by the Court

The Court reiterates, firstly, that in its decision of 26 October 2004 it declared the application inadmissible under Article 35 §§ 1 and 4 of the Convention in so far as the children were concerned. Secondly, as can be seen from the Supreme Court's judgment, the applicant parents' lawsuit and appeal to the Supreme Court were directed against the KRL subject and its implementation generally. Therefore, the Supreme Court found no ground for determining whether the teaching of the children had occurred in a manner that violated the relevant human rights conventions. Thirdly, the Court found that the applicant parents had failed to exhaust domestic remedies in respect of their complaint about the possibilities and modalities for obtaining a partial exemption from the KRL subject, and therefore declared this part of the application inadmissible under Article 35 § 4 of the Convention. Having regard to the parties' submissions, the Court, still considers, however, that the applicant parents' general complaint under Article 9 of the Convention and Article 2, second sentence, of Protocol No. 1 about the lack of a possibility to obtain full exemption from the KRL subject raises complex issues of law and fact, the determination of which should depend on an examination of the merits of the complaint. The Court concludes, therefore, that this part of the application is not manifestly ill-founded within the meaning of Article 35 § 1 of the Convention. No other grounds for declaring the said complaint inadmissible have been established.

D. Article 14 of the Convention taken in conjunction with Articles 8 and 9 of the Convention and Article 2, second sentence, of Protocol No. 1

1. Submissions of the parties

(i) The applicants

The applicants disputed the Government's understanding of the implications of the Court decision of 26 October 2004 declaring certain parts of the application inadmissible and adjourning the remainder. A limitation of the Court's assessment to the general issue of whether a violation had occurred would not satisfy the need for a thorough examination. Each complainant's case, including the teaching *in casu* – must fall within the Court's review.

The applicants argued that the fact that in 2001 the Government had decided to simplify the exemption procedure, by introducing a particular notification form, clearly indicated that the exemption procedure until then had not functioned satisfactorily. This simplification had been done four years after the enactment of the 1998 Act and long after the applicants had applied for an exemption. Nevertheless, the Government had failed to admit that the original partial exemption arrangement that had applied from 1997 until 2001 suffered from any shortcomings.

Although the partial exemption arrangement had been altered, it did not change the fundamental weaknesses of the KRL subject. The pupils could be exempted from taking part in certain activities, but not from knowing the contents of the activities or tuition in question. They could be exempted from reciting from the Bible, singing songs, performing prayers etc., but not from knowing what was recited, sung, prayed etc. The whole idea behind the exemption arrangement had been that it was possible to maintain a mental "separation" between knowledge and participation. The evaluations made of the KRL subject had shown that that distinction had not been understood in practice, not even by the teachers. Partial exemption would not secure the applicants' parental rights and freedom of religion, as protected by human right standards.

When parents claimed partial exemption from parts of the tuition other than the religious activities listed on the form, they had to give “brief” reasons for their request in order to enable the schools to consider whether the activity might reasonably be perceived as being the practice of another religion or adherence to another philosophical conviction under section 2-4 paragraph 4 of the 1998 Act. It was not easy for all parents to have detailed knowledge of and to single out those parts of the tuition they disapproved of and to apply for an exemption, especially when the whole structure of the KRL subject was based on a religious conception which in principle was contrary to the applicants' philosophy of life.

For the applicants, it was highly unsatisfactory that their opinions and deeply personal philosophical conviction in this area should be communicated to and examined by school teachers and administrators. Even though the parents might not have an obligation to state formally their own personal conviction, it was likely that this would become revealed in the

reasons that they provided in order to obtain a partial exemption. In the applicants' experience, this had been unworthy and undignified.

In practice, the partial exemption application procedure would apply to non-Christian parents only. Some of them were immigrants, with little or insufficient knowledge of the Norwegian school system and language and skills in conducting a theoretical dialogue about a religion with which they were not acquainted. For the applicants, however, all being ethnic Norwegians, this was not the case. Even so, despite some having great skills in oral and written communication and some even being well acquainted with the Norwegian school system, it had been hard for them to communicate satisfactorily with the school administration in the exemption application procedure. One difficulty had related to the revelation of what the parents found to be inconsistent with their own philosophy of life. Another problem had been the practical arrangement of the subject. In order to distinguish which parts of the tuition they sought exemption from, the parents had to know exactly what tuition would be offered, at what time, what parts of the textbook would be applied, what activities were to be expected etc. They would have to follow the curriculum and the tuition carefully, perhaps by "interviewing" their child on the progress and the contents of the instruction step by step. Even if the themes to be taught might seem acceptable in theory, the parents would have to make enquiries into how the teacher presented the material. The evaluation reports showed that it had been very hard to obtain relevant information in good time, which had also been the experience of the applicants.

Moreover, as a result of the partial exemption arrangement, the relationship between parent and child would suffer. The children's function as “go-between” between the parents and the school and the children's feeling of pressure from being different from others had caused frustration and conflicts of loyalty between the applicants and their children, as had their sense of stigmatisation.

The situation in class during teaching of the KRL subject had been likely to cause discrimination. A child exempted from parts of the teaching or activities had to 1) be physically taken to another place; or 2) be occupied by a different task or activity; or 3) just have to stay passive and “not fully present” as the teaching was carried on. During a prayer, for instance, a child might have to be present in the classroom, but without taking part, whilst still having to acquire knowledge of the prayer.

The system of partial exemption entailed difficulties and burdens for the parents that gave rise to unnecessary discrimination. In contrast, the previous system with a general exemption and a non-confessional, pluralistic philosophy of life subject for those exempted would have satisfied both the school obligations and the parental rights as protected by the Convention.

(i) The Government

In the view of the Government, the applicants' complaints under Articles 8 and 9 of the Convention and Article 2 of Protocol No. 1, taken in conjunction with Article 14 of the Convention, seemingly all related to "the possibilities and modalities for obtaining a partial exemption", which had been declared inadmissible by the Court on 26 October 2004.

The Government disputed that requiring parents to request exemption from particular elements of the KRL subject (partial exemption) amounted to discrimination in violation of Article 14.

The requirement under section 2-4 of the 1998 Act that parents must apply for exemption from the KRL subject did not give rise to an interference with their privacy in the sense of Article 8. Reasons for the parents' request had to be given only with regard to activities that did not immediately appear to be the practice of a specific religion or adherence to a different philosophy of life. In cases where reasons had to be given, the parents were not required to provide information about their own religious or philosophical convictions.

The Government maintained that the exemption clause of the 1998 Act was non-discriminatory. Exemptions were available to the same extent for all parents, regardless of, in the words of Article 14, "sex, race, colour, language, religion, political or other opinion, national or social origin...". The exemption clause did not draw a line between Christians on the one hand and non-Christians on the other hand.

In any event, the conditions imposed by the exemption clause could not be considered disproportionate or unreasonably burdensome, and thus warrant a right of full exemption. As argued above, requests for exemption did not need to be justified by the parents in cases where the activities clearly might be perceived to be of a religious nature. Reasons had to be given only if more extensive exemptions were sought and even then the reasons did not have to be comprehensive.

Furthermore, it must be pointed out that other subjects as well, such as history, music, physical education and social studies, might give rise to religious or ethical issues, and the exemption clause included in section 2-4 of the 1998 Act therefore applied to all subjects. In the reasoning of the parents, allowing for only partial exemption from these subjects as well would be discriminatory. In the view of the Government, the only viable system both for those subjects and for the KRL subject was to allow for partial exemptions. If that were to constitute discrimination, Article 14 would render the implementation of most compulsory education impossible.

2. Assessment by the Court

As to the parties' disagreement regarding the scope of the case as delimited by its partial decision on admissibility of 26 October 2004, the

Court reiterates that it declared inadmissible on grounds of failure to exhaust domestic remedies, the parents' separate complaint about the possibilities and modalities for obtaining a partial exemption from the KRL subject. It noted that the parents' lawsuit and appeal to the Supreme Court had been directed against the KRL subject and its implementation generally and that the Supreme Court had therefore found no basis for determining whether the teaching of the appellants' children had occurred in a manner which violated the relevant human rights treaties. The Court further observed that the scope of the case was limited to the parents' general complaint about the lack of a possibility to obtain a full exemption from the KRL subject. However, the above limitations on the scope of the case that follow from the decision of 26 October 2004 do not prevent the Court from considering the general aspects of the partial exemption arrangement in its examination of the issue regarding full exemption, notably in the context of the parents' complaint under Article 14.

The Court, having regard to the parties' submissions, considers that the applicant parents' complaint of discrimination under Article 14 of the convention, taken in conjunction with Articles 8 and 9 of the Convention and Article 2 of Protocol No. 1, raises complex issues of law and fact, the determination of which should depend on an examination of the merits of the complaint. The Court concludes, therefore, that this part of the application is not manifestly ill-founded within the meaning of Article 35 § 1 of the Convention. No other grounds for declaring the said complaint inadmissible have been established.

For these reasons, the Court unanimously

Declares admissible, without prejudging the merits, the parents' complaint under Article 9 of the Convention and Article 2, second sentence, of Protocol No. 1 concerning the absence of a right to full exemption and their complaint under Article 14 taken in conjunction with the aforementioned provisions and Article 8 of the Convention.

Søren NIELSEN
Registrar

Christos ROZAKIS
President