AS TO THE ADMISSIBILITY OF

Application No. 19844/92
by Renata LEUFFEN
against the Federal Republic of Germany

The European Commission of Human Rights sitting in private on 9 July 1992, the following members being present:

MM. C.A. NØRGAARD, President
J.A. FROWEIN
S. TRECHSEL
E. BUSUTTIL
A.S. GÖZÜBÜYÜK
A. WEITZEL
J.-C. SOYER
H.G. SCHERMERS
H. DANELIUS
Mrs. G. H. THUNE
Sir Basil HALL
MM. F. MARTINEZ
C.L. ROZAKIS
Mrs. J. LIDDY
MM. L. LOUCAIDES
J.-C. GEUS
M.P. PELLONPÄÄ
B. MARXER

Mr. H.C. KRÜGER, Secretary to the Commission

Having regard to Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 18 February 1992 by Renata LEUFFEN against the Federal Republic of Germany and registered on 13 April 1992 under file No. 19844/92;

Having regard to the report provided for in Rule 47 of the Rules of Procedure of the Commission;

Having deliberated;

Decides as follows:

THE FACTS

The applicant is a German citizen, born in 1959 and residing in Düsseldorf (Federal Republic of Germany). She is a freelance journalist and writer.

The applicant is the mother of a son, born in 1984.

On 13 January 1992 the Düsseldorf District Court (Amtsgericht) decided to appoint the Youth Office of the City of Düsseldorf as tutor (Pfleger) for her son as far as the child's attendance in a school or school- kindergarten is concerned and to establish an expert medical and psychiatric opinion of the child on the ground that the applicant refused to send her son to school and insisted on imparting teaching and education herself at home.

The applicant's appeal against this decision was dismissed by the Düsseldorf Regional Court (Landgericht) on 23 January 1992.

On 12 February 1992 the applicant appealed to the Düsseldorf

Court of Appeal (Oberlandesgericht). The Court of Appeal dismissed her appeal on 27 March 1992. The Court recalled that the State had an obligation to impart an adequate education to children. It held that the applicant's refusal to send her son to school was an abuse of her right to care for her son and gravely endangered his mental and emotional health and development. Compared to the education provided by a single person, conventional schools had the advantage of contributing to the child's ability to interact successfully on a social level, and of allowing access to high schools, universities or a profession.

A constitutional appeal lodged by the applicant with the Federal Constitutional Court (Bundesverfassungsgericht) was rejected on 10 April 1992 as offering no prospects of success. The Federal Constitutional Court held that the partial withdrawal of the applicant's right to care for the child was justified in the interests of the child and was also the least restrictive means available to secure the child's education.

The Court stressed the danger of concentrating education and teaching on one person and the importance for children to have school certificates and learn social behaviour. To leave the situation as it was could have irreversible consequences for the child. Having regard to the applicant's conduct, it was not in breach of constitutional rights to partially withdraw from the applicant the care for the child and to appoint a guardian. Moreover the applicant had the possibility of choosing a school corresponding as far as possible to her religious beliefs. The Court underlined that no decision as to separation of her child from her has been taken.

On 12 May 1992 the Youth Office of the City of Düsseldorf as tutor applied to the competent court to decide that the child may be taken away from the mother by force. Apparently the hearing is scheduled for 15 July.

The tutor has informed the applicant that he has enrolled her son at a Catholic elementary school.

COMPLAINTS

The applicant complains of the court decisions by which she is refused to provide personally an education to her son at home and by which a guardian had been appointed with a view to securing her son's school attendance. The applicant submits that God has given her the exclusive responsibility and authority to educate her child. She believes it a sin for her to send her son to a traditional school.

She stresses that she is the sole person being able to teach her son in accordance with his needs and abilities. She expresses her concern over the academic and moral decline in public schools where her son would be taught obscenities and become a victim of violent behaviour and negative socialisation pressure. According to her, formal schooling amounts to child abuse, disaster for the child's mental and physical health and to frustration and failure. Her son would not survive compulsory school attendance. The applicant contends that her rights and freedoms under the Convention have been and continue to be prejudiced by the firm intention of the German authorities to subject her son to compulsory school attendance.

This is even more unjust having regard to the fact that the children of some religious groups are exempted from this obligation and that various other countries recognise the parents' right to teach their own children at home.

The applicant alleges a violation of Articles 3, 6, 7, 8, 9, 13, 14 and 17 of the Convention and of Article 2 of Protocol No. 1.

THE LAW

1. The applicant complains of the court decisions by which the care of her son was partially committed to a tutor with a view to securing the child's attendance in a school or school-kindergarten and to establish an expert medical and psychiatric opinion of the child. She alleges that these decisions were in breach of her right to ensure her son's education and teaching at home in conformity with her own religious and philosophical convictions.

Article 2 of Protocol No 1 (P1-2) provides that :

> "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 education and teaching in conformity with their own religious and philosophical convictions."

The Commission notes that the first sentence of Article 2 of Protocol No 1 (P1-2) enshrines the fundamental right of the child to education. This right 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. It goes without saying that such regulation must never injure the substance of the right to education nor conflict with other rights enshrined in the Convention (Eur. Court H.R., Judgment "Relating to certain aspects of the laws on the use of languages in education in Belgium" of 23 July 1968, p. 32, para. 5).

The second sentence of Article 2 (Art. 2) recognises the role of the State in education as well as the rights of parents. The provision aims at safeguarding pluralism in education, which is essential for the preservation of the "democratic society" as conceived by the Convention. In view of the power of the modern State, it is above all through State teaching that this aim must be realised (see Eur. Court. H.R., Kjeldsen, Busk Madsen and Pedersen judgment of 7 December 1976, Series A n° 23, p. 25, para. 50).

In the Commission's view it follows that Article 2 of Protocol No 1 (P1-2) does not prevent the State from establishing compulsory schooling, be it in State or private schools of satisfactory standard, and that verification and enforcement of educational standards are an integral part of that right (see No 10233/83, dec. 6.3.84, D.R. 37 p. 105).

The State, in fulfilling the functions assumed by it in regard to education and teaching, must take care that information or knowledge is conveyed in an objective, critical and pluralistic manner. The State is forbidden to pursue an aim of indoctrination that might be considered as not respecting parents' religious and philosophical convictions. That is the limit that must not be exceeded (see above mentioned Eur. Court H.R., Kjeldsen, Busk Madsen and Pedersen judgment, Series A n° 23, p. 26, para. 53).

The applicant is of the opinion that compulsory schooling of her son would violate her right to ensure his education in conformity with her religious and philosophical convictions as guaranteed by Article 2 of Protocol No. 1 (P1-2).

However, the European Court of Human Rights has held that the convictions of parents must not conflict with the fundamental right of the child to education, the whole of Article 2 (Art. 2) being dominated by its first sentence (Campbell and Cosans judgment of 25 February 1982, Series A no 48, p. 16, par. 36). This means that parents may not refuse the right to education of a child on the basis of their

convictions.

The applicant is of the opinion that she can ensure the education of her son by herself. The Commission notes that the national authorities have in detail evaluated the possibilities in this respect and have come to the conclusion, with the help of an expert, that education only by the applicant of her son would be damaging for the child. For this reason a public authority was appointed tutor to arrange for his attendance at a school. It is clear that the tutor must choose a school which as far as possible meets the applicant's convictions. In fact the son has been enrolled at a Catholic elementary school - the applicant being a practising Catholic.

Under these circumstances the Commission finds that the rights of the applicant under Article 2 of Protocol No. 1 (P1-2) were not violated by the decisions complained of. The Commission notes in that context that, as the Federal Constitutional Court has underlined, no general decision as to separation of the child from the applicant has been taken. The Commission also underlines that as far as the implementation of the measures for securing school attendance of the applicant's son are concerned the authorities are under an obligation to make sure that only such force is being used as is absolutely necessary.

It follows that this aspect of the application is manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

2. The applicant also complains that the court decisions given in her case violate her right to respect for family life and her right to freedom of thought, conscience and religion, as guaranteed by Articles 8 and 9 (Art. 8, 9) of the Convention.

However, the Commission finds that the interference with the right of the applicant under Article 8 (Art. 8) is justified under Article 8 para. 2 (Art. 8-2) for the same reasons as outlined above as being provided for by law and necessary for the protection of the right of the child to education. Assuming that an interference with the rights of the applicant under Article 9 (Art. 9) could be in issue the same reasons would apply.

Therefore, this part of the application must likewise be rejected as being manifestly ill-founded in accordance with Article 27 para. 2 (Art. 27-2) of the Convention.

3. The applicant finally alleges that she is the victim of a violation of Articles 3, 6, 7, 13, 14 and 17 (Art. 3, 6, 7, 13, 14, 17) of the Convention.

The Commission has examined the applicant's separate complaints as they have been submitted by her. However, after considering this part of the application as a whole, the Commission finds that it does not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols and in particular in the above Articles.

It follows that the remainder of the application is also manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

For these reasons, the Commission, by a majority,

DECLARES THE APPLICATION INADMISSIBLE.

Secretary to the Commission President of the Commission

(H.C. KRÜGER) (C.A. NØRGAARD)