

June 2007

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## ***Folgerø and Others v. Norway [GC] - 15472/02***

Judgment 29.6.2007 [GC]

### **Article 2 of Protocol No. 1**

#### **Right to education**

Refusal to grant full exemption from instruction in Christianity, religion and philosophy in State primary schools: *violation*

### **Article 9**

#### **Article 9-1**

##### **Freedom of conscience**

##### **Freedom of religion**

##### **Freedom of thought**

Refusal to grant full exemption from instruction in Christianity, religion and philosophy in State primary schools: *violation*

*Facts:* The applicants, all members of the Norwegian Humanist Association, had children in primary school at the time of the events complained of. In 1997 the Norwegian primary-school curriculum was changed, with two separate subjects – Christianity and philosophy of life – being replaced by a single subject covering Christianity, religion and philosophy, known as KRL. This subject was to cover the Bible and Christianity in the form of cultural heritage and the Evangelical Lutheran Faith (the official State religion in Norway, of which 86% of the population are members); other Christian faiths; other world religions and philosophies; ethics, and philosophy. Under the previous system, parents had been able to apply for their child to be exempted from Christianity lessons. Under the 1998 Education Act however a pupil could be granted exemption only from those parts of KRL which the parents considered amounted to the practising of another religion or adherence to another philosophy of life, from the point of view of their own religion or philosophy of life. The applicants and other parents made unsuccessful requests to have their children entirely exempted from KRL.

In May 2006 the Chamber dealing with the case relinquished jurisdiction in favour of the Grand Chamber.

*Law:* The parents' complaint under Article 9 of the Convention and Article 2 of Protocol No. 1 fell to be examined under the latter provision, this being specifically directed towards the area of education.

The intention behind the introduction of KRL had been that, by teaching Christianity, other religions and philosophies together, it would be possible to ensure an open and inclusive school environment. This intention was clearly

consistent with the principles of pluralism and objectivity embodied in Article 2 of Protocol No. 1.

The relevant provisions of the 1998 Education Act placed emphasis on the transmission of knowledge about not only Christianity, but also other world religions and philosophies. The aim was to avoid sectarianism and foster intercultural dialogue and understanding by bringing pupils together within the framework of one joint subject rather than allowing for full exemption which would result in splitting pupils into sub-groups pursuing different topics.

The fact that knowledge about Christianity represented a greater part of the curriculum than knowledge about other religions and philosophies could not in itself give rise to an issue under Article 2 of Protocol No. 1. In view of the place occupied by Christianity in Norway's national history and tradition, this had to be regarded as falling within the State's margin of appreciation in planning and setting the curriculum.

However, it was clear that preponderant weight was given to Christianity, notably through reliance on the so-called "Christian object clause" in the 1998 Education Act, according to which the object of primary and lower secondary education was to be, in agreement and cooperation with the home, among other things, to help give pupils a Christian and moral upbringing. The difference of emphasis was also reflected in the wording used in the legislation. Moreover, approximately half of the items listed in the curriculum referred to Christianity alone, whereas the remainder of the items were shared between other religions and philosophies.

When taken together with the Christian object clause, the description of the contents and the aims of KRL set out in the 1998 Education Act and other texts forming part of the legislative framework suggested that the differences applied to the teaching of Christianity as compared to that of other religions and philosophies were not only quantitative but also qualitative. In view of these disparities it was not clear how the further aim of promoting understanding, respect and the ability to maintain dialogue between people with different perceptions of beliefs and convictions could be properly attained.

The Court then considered whether the possibility for parents to request partial exemption from KRL was sufficient to counter the imbalance noted. It noted firstly that the practical operation of the partial exemption arrangement gave rise to considerable problems. Thus parents needed to be adequately informed of the details of the lesson plans to be able to identify and notify to the school in advance those parts of the teaching that would be incompatible with their own convictions and beliefs. It must have been difficult for parents to keep themselves constantly informed about the contents of the teaching that went on in the classroom and to single out incompatible parts, particularly so where it was the general Christian leaning of the KRL subject that posed a problem.

Secondly, except for in instances where the exemption request concerned clearly religious activities (requiring no specific grounds), it was a condition for obtaining partial exemption that the parents give reasonable grounds for their request. Information about personal religious and philosophical conviction concerned some of the most intimate aspects of private life. Although parents were under no obligation to reveal their convictions and the school authorities' attention was drawn to the need to take due account of the parents' right to respect for private life, there was a risk that the parents might feel compelled to disclose to the school authorities intimate aspects of their own religious and philosophical convictions.

Thirdly, in the event of a parental note requesting partial exemption, the schools were to apply, in cooperation with the parents, a flexible approach, having regard to the parents' religious or philosophical affiliation and to the kind of activity at issue. Thus for a number of activities, for instance prayers, the singing of hymns, church services and school plays, observation by attendance could replace involvement through participation, the basic idea being that the exemption should relate to the activity as such, not to the knowledge to be transmitted through the activity. However, in the Court's view, this distinction between activity and knowledge must not only have been complicated to operate in practice but also seemed likely to have substantially diminished the effectiveness of the right to a partial exemption as such. Besides, on a purely practical level, parents might have misapprehensions about asking teachers to take on the extra burdens of such differentiated teaching.

The Court accordingly found that the system of partial exemption was capable of subjecting the parents concerned to a heavy burden with a risk of undue exposure of their private life and that the potential for conflict was likely to deter them from making such requests. In certain instances, notably with regard to activities of a religious character, the scope of a partial exemption might even be substantially reduced by the notion of differentiated teaching. This could hardly be considered consistent with the parents' right to respect for their convictions for the purposes of Article 2 of Protocol No. 1, as interpreted in the light of Articles 8 and 9 of the Convention. Moreover, the Court was not convinced that the possibility, invoked by the Government, for parents to have their children educated in private schools could dispense the State from its obligation to safeguard pluralism in State schools which are open to everyone.

Against this background, notwithstanding the many laudable legislative purposes associated with the introduction of KRL in the ordinary primary and lower secondary schools, the respondent State could not be said to have taken sufficient care that information and knowledge included in the curriculum be conveyed in an objective, critical and pluralistic manner for the purposes of Article 2 of Protocol No. 1.

*Conclusion:* violation (nine votes to eight).

Article 41 – The finding of a violation constituted in itself sufficient just satisfaction for the non-pecuniary damage sustained by the applicants.

For further details, please see Press Release no. 464.

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