CONSEILDEL'EUROPECOUNCILOFEUROPECOUR

FIFTH SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 35504/03
by Fritz KONRAD and Others
against Germany

The European Court of Human Rights (Fifth Section), sitting on 11 September 2006 as a Chamber composed of:

Mr P. LORENZEN, *President,*
Mrs S. BOTOUCHAROVA,
Mr K. JUNGWIERT,
Mr V. BUTKEVYCH,
Mrs M. TSATSA-NIKOLOVSKA,
Mr R. MARUSTE,
Mr M. VILLIGER, *judges,*

and Mrs C. WESTERDIEK, *Section Registrar*

Having regard to the above application lodged on 4 November 2003,

Having deliberated, decides as follows:

THE FACTS

The four applicants are Mr Fritz Konrad, a Swiss-German national born 1951, Mrs Marianna Konrad, a Swiss national born 1956, and their children Rebekka, a Swiss-German national born in 1992, and Josua, a Swiss-German national born in 1993. They live in Herbolzheim (Germany) and are represented before the Court by Mr W. Roth and Mr R. Reichert, two lawyers who are 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 because of sex education, the appearance of mythical creatures such as witches and dwarfs in fairytales during school lessons and the increasing physical and psychological violence between pupils at school.

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. That institution specialises in assisting devout Christian parents in educating their children at home. The school's syllabus contains both books and materials which are being used by State or private schools as well as materials especially 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.

On behalf of their children, the applicant parents filed a motion for their children to be exempted from compulsory primary school attendance and for the parents to be authorised to educate them at home. The third and the fourth applicant obtained the age for compulsory school attendance in 1999 and 2000 respectively. As to date, they do not visit a private or State school.

On 28 August 2000, the Offenburg School Office (*Staatliches Schulamt Offenburg*) rejected the motion pursuant to Section 72 § 1 in conjunction with Section 76 § 2 of the Baden Wurttemberg School Act (*Schulgesetz Baden Württemberg*). The Freiburg Higher School Office (*Oberschulamt Freiburg*) dismissed the applicants' objection on 30 October 2000.

On 11 July 2001, the Freiburg Administrative Court dismissed the applicants' request for an 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 to keep their children away from convictions which would be harmful in their opinion. That freedom, however, was restricted by the State's obligation for education and tuition. Hence compulsory school 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 educate 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 children both to gain first

experiences with society and to acquire social competences. 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 for home education. Therefore, they could hardly be expected to take 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 confessional school which would possibly be more sensitive as to sex education than a public school, although the court questioned whether sex education would be of any relevance in a primary school's syllabus.

On 18 June 2002, the Baden Wurttemberg Administrative Court of Appeal dismissed the applicants' appeal. It found that, even though the applicant parents' right to educate their children included religious education, they were not entitled under the Basic Law to the exclusive education of their children. The State's constitutional obligation to provide children with education was on an equal footing. The court stressed that the decisive point was not whether or not home education was equally effective as primary school education, but that compulsory school attendance require 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 interest to become part of that society. The parents' right to education did not go as far as to deprive their children of that experience. Parents could require the State to take positive measures in order to prevent their children from ill-treatment from other children. The applicant parents had however not argued that the school authorities in Baden Wurttemberg 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. As 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 grant the freedom not to deal with any possible conflicts between science and religion. The "mythical figures" like dwarfs or witches which the applicants

considered as representing occultism were characters in fairytales 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 the applicants' motion to be granted leave to appeal on points of law.

On 29 April 2003, the Federal Constitutional Court refused to admit the applicants' constitutional complaint because it had already dealt with the decisive constitutional issues in its settled case-law. It recalled that the administrative courts' decisions had neither violated the applicant parents' right to educate their children nor the applicants' freedom of religion. A balance of interest between the applicants' rights on the one hand and the State's obligation to provide for 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 for education did not only concern the acquisition of knowledge, but also the education of responsible citizens who participate in a democratic and pluralistic society. To hold that home education under the State's supervision was not equally as effective to pursue these aims was at least not erroneous. The acquisition of social competence in dealing with other persons who hold different views and in holding an opinion which differed from the views of the majority could only be trained by regular contact with society. Everyday experience with other children based on regular school attendance was a more effective means to achieve that aim. The Federal Constitutional Court found that the interferences with the applicants' fundamental rights were also proportionate given the general interest of society to avoid 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 to educate their children themselves when they did not attend school, and the school system was obliged to be considerate of dissenting religious beliefs.

B. Relevant domestic law

1. Relevant provisions of the Basic Law

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 shall 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 against their will to give religious instruction.

§ 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 when private schools are not inferior to the state schools in terms of their educational aims, their facilities, or the professional training of their teaching staff, and when 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 State (Land) Baden Wurttemberg

Article 14

§ 1 School attendance is compulsory.

(...)

3. Relevant provisions of the Baden Wurttemberg School Act

Section 72 Compulsory school attendance; pupil's obligations

§ 1 Compulsory school attendance applies to all children and juveniles which are permanently resident (...) in the State Baden Wurttemberg.

(...)

§ 4 Pupils are required to attend a German school. The school supervisory authority decides 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 the Act, unless it is otherwise provided 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 complain under Articles 8 and 9 as well as under Article 2 of Protocol No. 1 of the Convention about the refusal of permission to educate their children at home in conformity with their own religious beliefs and the subsequent decisions by the German courts confirming that refusal. Moreover, they invoke all three provisions in conjunction with Article 14.

THE LAW

I. The applicants allege that the refusal of permission to educate their children at home violates their right to ensure an education for their children in conformity with their own religious convictions in accordance with Article 2 of Protocol No. 1. That provision 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 such education and teaching in conformity with their own religious and philosophical convictions."

The applicant parents find that it is their obligation to educate their children in accordance with the Bible and Christian values. They infer from numerous quotations from the Bible that their children's education is an obligation on them which cannot easily be transferred to third persons. They submit that, by teaching their children at home, they fulfil 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 are 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 amounts 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 applicants' beliefs. As the applicants belong to a religious minority, there are no private schools which suit their convictions. Moreover, the applicants point out that home education is permitted in the United States, Canada, Switzerland, Austria and Norway. Countries such as Denmark, Finland and Ireland provide 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 of their children. It aims safeguarding pluralism in education which is essential for the preservation

of the "democratic society" as conceived by the Convention (*B.N. and S.N. v. Sweden*, no. 17678/91, Commission decision of 30 June 1993). In view of the power of the modern State, it is above all through State teaching that this aim must be realised (*Kjeldsen, Busk Madsen and Pedersen v. Denmark*, judgment of 7 December 1976, Series A no. 23, pp. 24-25, § 50).

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 rights of parents to respect for their religious and philosophical convictions (*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 right of the child to education, the whole of Article 2 of Protocol No. 1 being dominated by its first sentence (*Campbell and Cosans v. the United Kingdom*, judgment of 25 February 1982, Series A no. 48, p. 16, § 36). This means that parents may not refuse the right to education of a child on the basis of their convictions (*B.N. and S.N. v. Sweden*, cited above, (see *Leuffen v. Germany*, no. 19844/92, Commission decision of 9 July 1992).

The Court notes that, in the present case, the applicant parents filed their complaints also 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 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 nevertheless regards the above principles to 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 *Belgian Linguistic case*, judgment of 23 July 1968, Series A no. 6, p. 32, § 5). Therefore, Article 2 of Protocol No. 1 implies the possibility for the State to establish compulsory schooling, be it in State schools or private tuition of a satisfactory standard (see *Family H. v. the United Kingdom*, no. 10233/83, decision of 6 March 1984, 37 D.R. p. 108; *B.N. and S.N. v. Sweden*, cited above, *Leuffen v. Germany*, cited above). The Court observes in this respect 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 its 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 the integration into and

first experience with society are important goals in primary school education. The German courts found that those objectives cannot be equally met by home education even if it allowed children to acquire the same standard of knowledge as provided for by primary school education. The Court considers this presumption as not being erroneous and as falling within the Contracting States' margin of appreciation which they enjoy in setting up and interpreting rules for their education systems. The Federal Constitutional Court stressed the general interest of society to avoid 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*, judgment of 13 February 2003, *Reports of Judgments and Decisions* 2003-II, p. 301, § 89)

Moreover, the German courts have pointed to the fact that the applicant parents were free to educate their children after school and at weekends. Therefore, the parent's right to education in conformity with their religious convictions is not restricted in a disproportionate manner. The 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 v. Denmark*, cited above, pp. 27-28, § 54; *Efstratiou v. Greece*, judgment of 27 November 1996, *Reports of Judgments and Decisions* 1996-VI, p. 2359, § 32).

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

II. The applicants also complain that the refusal to allow them to educate their children in accordance with their religious beliefs amounts to a violation of their respect to private life under Article 8 which holds:

> "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 complain about a violation of their freedom of thought, conscience and religion, as guaranteed by Article 9 of the Convention. That provision provides that:

> "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 of both provisions would, for the reasons above, be justified under Article 8 § 2 and Article 9 § 2 respectively as being provided for by law and necessary in a democratic society and in the public interest of securing the education of the child.

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

III. The applicants further complain about a violation of Article 14 (read in conjunction with Articles 8, 9 and Article 2 of Protocol No. 1 of the Convention). Article 14 provides that:

"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 submit that they are being discriminated against other persons who hold different religious convictions which do not conflict with compulsory school attendance (Article 14 read in conjunction with Article 9 and Article 2 of Protocol No. 1 of the Convention). They also find that they are being discriminated against because the applicant children are forced to attend a State school which does not provide for a religious education. Having regard to its conclusion concerning the latter two provisions, the Court finds that no separate issue arises in conjunction with Article 14.

Moreover, the applicants find that they are being discriminated against families whose children have been exempted from compulsory school attendance on the grounds that parents work abroad or are not settled because their professional life requires moving around the country (Article 14 read in conjunction with Article 8 of the Convention).

The Court reiterates that, for the purposes of Article 14, a difference in treatment between persons in analogous or relevantly similar positions is discriminatory if it has no objective and reasonable justification, i.e. 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 a 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 applicants' children and other children who obtain exemption from

compulsory school attendance "in exceptional circumstances" as provided for by Section 76 § 1 of the Baden Wurttemberg School Act or equivalent provisions in other States (Länder). However, the applicants submit that such "exceptional circumstances" have been recognised by the school supervisory authorities only in cases in which children were physically unfit to attend school or in which parents move around the country for professional reasons. Exemptions were granted by the school supervisory authorities because the feasibility of school attendance would have caused undue hardship for those children. Those exemptions were hence granted for mere practical reasons, whereas the applicants sought to obtain 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.

Claudia WESTERDIEK
Registrar

Peer LORENZEN
President