

COURT (CHAMBER)

CASE OF KJELDTSEN, BUSK MADSEN AND PEDERSEN v. DENMARK

(Application no. 5095/71; 5920/72; 5926/72)

JUDGMENT

STRASBOURG

7 December 1976

In the case of Kjeldsen, Busk Madsen and Pedersen,

The European Court of Human Rights, sitting, in accordance with Article 43 (art. 43) of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter referred to as "the Convention") and Rules 21 and 22 of the Rules of Court, as a Chamber composed of the following judges:

Mr. G. BALLADORE PALLIERI, *President*,

Mr. A. VERDROSS,

Mr. M. ZEKIA,

Mrs. H. PEDERSEN,

Mr. S. PETREN,

Mr. R. RYSSDAL,

Mr. D. EVRIGENIS,

and also Mr. M.-A. EISSEN, *Registrar*, and Mr. H. PETZOLD, *Deputy Registrar*,

Having deliberated in private on 3 and 4 June and then on 5 November 1976,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case of Kjeldsen, Busk Madsen and Pedersen was referred to the Court by the European Commission of Human Rights (hereinafter referred to as "the Commission"). The case originated in three applications (nos. 5095/71, 5920/72 and 5926/72) against the Kingdom of Denmark lodged with the Commission in 1971 and 1972 by Viking and Annemarie Kjeldsen, Arne and Inger Busk Madsen, and Hans and Ellen Pedersen, all parents of Danish nationality; the joinder of the said applications was ordered by the Commission on 19 July 1973.

2. The Commission's request, to which was attached the report provided for under Article 31 (art. 31) of the Convention, was filed with the registry of the Court on 24 July 1975, within the period of three months laid down by Articles 32 para. 1 and 47 (art. 32-1, art. 47). The request referred to Articles 44 and 48 (art. 44, art. 48) and to the declaration made on 7 April 1972 by the Kingdom of Denmark recognising the compulsory jurisdiction of the Court (Article 46) (art. 46). The purpose of the Commission's request is to obtain a decision from the Court as to whether or not the facts of the case disclose a breach by the respondent State of its obligations under Article 2 of the Protocol (P1-2) of 20 March 1952 (hereinafter referred to as "Protocol No. 1"); it also makes reference to Articles 8, 9 and 14 (art. 8, art. 9, art. 14) of the Convention.

3. On 26 July 1975, in the presence of the Registrar, the President of the Court drew by lot the names of five of the seven judges called upon to sit as members of the Chamber; Mrs. H. Pedersen, the elected judge of Danish nationality, and Mr. G. Balladore Pallieri, the President of the Court, were ex officio members under Article 43 (art. 43) of the Convention and Rule 21 para. 3 (b) of the Rules of Court respectively. One of the members of the Chamber, namely Mr. J. Cremona, was subsequently prevented from taking part in the consideration of the case; he was replaced by the first substitute judge, Mr. M. Zekia.

Mr. Balladore Pallieri assumed the office of President of the Chamber in accordance with Rule 21 para. 5.

4. The President of the Chamber ascertained, through the Registrar, the views of the Agent of the Government of the Kingdom of Denmark (hereinafter referred to as "the Government") and of the delegates of the Commission regarding the procedure to be followed. By an Order of 8 September 1975, the President of the Chamber decided that the Government should file a memorial within a time-limit expiring on 1 December 1975 and that the delegates of the Commission should be entitled to file a

memorial in reply within two months of receipt of the Government's memorial.

5. On 12 November 1975, the Agent of the Government advised the Registrar of his intention to contest the jurisdiction of the Court in the present case.

In accordance with the leave granted by the President of the Chamber, the Government's memorial, filed with the registry on 29 November 1975, dealt exclusively with this preliminary question. The Government referred therein to the declaration whereby, on 7 April 1972, they recognised "the compulsory jurisdiction" of the Court "ipso facto and without special agreement, in respect of any other Contracting Party to [the Convention] accepting the same obligations, subject to reciprocity". In conclusion, they submitted:

(i) that the said declaration "is expressly limited to cases brought before the Court by another declarant State";

(ii) "that such limitation of the scope of declarations made under Article 46 (art. 46) is not excluded either by the provision or by the structure of the Convention";

(iii) "that in any event" the Government "cannot be held to be subject to the compulsory jurisdiction of the Court beyond the express wording" of their declaration.

Emphasising in addition that they had not accepted ad hoc the jurisdiction of the Court as regards the instant case (Article 48 of the Convention) (art. 48), the Government invited the Court to find that it had "no jurisdiction to deal with the merits of the present cases".

6. By a message received at the registry on 16 January 1976, the Agent of the Government informed the Registrar that, following a debate the previous day in the Danish Parliament, his Government had "decided to withdraw with immediate effect [their] preliminary objection, thus accepting ad hoc the jurisdiction of the Court".

7. At a meeting in Strasbourg on 20 January 1976, the Chamber took cognisance of the said message and instructed the President to advise the Government that formal note thereof had been taken; this task the President discharged by means of an Order of 28 January.

The Chamber noted that its jurisdiction was henceforth established for the case at issue, whether on the basis of the special consent expressed in that message or by virtue of the general declaration made by the Kingdom of Denmark on 7 April 1972 under Article 46 (art. 46) of the Convention, as the delegates of the Commission contended in a memorial filed with the registry on 26 January 1976.

8. By the same Order of 28 January 1976, the President of the Chamber settled the written procedure as regards the merits of the case. Having consulted, through the Registrar, the Agent of the Government and the delegates of the Commission in this connection, he decided that the Government should file a memorial not later than 10 March 1976 and that the delegates of the Commission should be entitled to file a memorial in reply within two months of receipt of the Government's memorial.

The Government's memorial was received at the registry on 11 March, that of the delegates on 12 May 1976.

9. On 20 March 1976, the President of the Chamber instructed the Registrar to invite the Commission to produce certain documents, which were communicated to the registry on 26 March.

10. After consulting, through the Registrar, the Agent of the Government and the delegates of the Commission, the President of the Chamber decided by an Order of 19 May 1976 that the oral hearings should open on 1 June 1976.

11. In a telegram of 13 May 1976 addressed to the Commission's principal delegate, Mr. and Mrs. Kjeldsen declared that they withdrew their application. The Secretary to the Commission notified the Registrar of this on 21 May; he specified at the same time that, having considered the matter, the Commission had decided to request the Court not to strike the application out of its list.

Mr. and Mrs. Kjeldsen in addition wrote directly to the Registrar on 17 and 27 May 1976. In their letters, which were drafted in somewhat violent terms, they gave as the explanation for their "discontinuance" the far-reaching divergences between their own arguments and those of the applicants Busk Madsen and Pedersen. As they objected to the Commission's having ordered the joinder of the three applications, they requested the Court, in the alternative, to postpone the hearings until a later date and to examine their case separately.

12. On 24 and 31 May and then on 1 June 1976, the Government communicated several documents to the Court.

13. The oral hearings were held in public at the Human Rights Building, Strasbourg, on 1 and 2 June 1976.

There appeared before the Court:

- for the Government:

Mr. A. SPANG-HANSEN, Barrister

at the Supreme Court of Denmark, *Agent*;

Mr. J. MUNCK-HANSEN, Head of Division

at the Ministry of Education,

Mr. T. RECHNAGEL, Head of Division

at the Legal Department of the Ministry of Foreign Affairs,

Mr. N. EILSCHOU-HOLM, Head of Division

at the Ministry of Justice, *Advisers*;

- for the Commission:

Mr. F. WELTER, *Principal Delegate*,

Mr. J. FROWEIN, *Delegate*.

The Court heard addresses by Mr. Welter and Mr. Frowein for the Commission and by Mr. Spang-Hansen for the Government, as well as their replies to questions put by the Court.

AS TO THE FACTS

14. The applicants, who are parents of Danish nationality, reside in Denmark. Mr. Viking Kjeldsen, a galvaniser, and his wife Annemarie, a schoolteacher, live in Varde; Mr. Arne Busk Madsen, a clergyman, and his wife Inger, a schoolteacher, come from Åbenrå; Mr. Hans Pedersen, who is a clergyman, and Mrs. Ellen Pedersen have their home in Ålborg.

All three couples, having children of school age, object to integrated, and hence compulsory, sex education as introduced into State primary schools in Denmark by Act No. 235 of 27 May 1970, amending the State Schools Act (Lov om ændring af lov om folkeskolen, hereinafter referred to as "the 1970 Act").

Primary education in general

15. According to Article 76 of the Danish Constitution, all children have the right to free education in the State primary schools (folkeskolen), although parents are not obliged to enrol them there and may send them to a private school or instruct them at home.

During the school year 1970/71, a total of 716,665 pupils were attending 2,471 schools, of which 277 were private with 43,689 pupils. Some parents chose to educate their children at home.

16. At the time of the facts at issue, primary education in State schools was governed by the State Schools Act (Lov om folkeskolen) (a consolidated version of which was set out in Executive Order No. 279 of 8 July 1966), which had been amended on various occasions between 1966 and 1970.

Primary education lasted for nine years; a tenth year, as well as a pre-school year for children of five to six years, were voluntary.

The subjects taught in the first four years were Danish, writing, arithmetic, knowledge of Christianity (kristendomskundskab), history, geography, biology, physical training, music, creative art and needlework. In the fifth and sixth years, English and woodwork were added, and in the seventh year German, mathematics, natural sciences and domestic science. As from the eighth year the pupils were, to some extent, allowed to choose from these courses the subjects they preferred.

Under the Act, the Minister of Education determined the objectives of schooling and the local school authorities fixed the contents of the curriculum and the number of lessons. There were, however, two exceptions to this rule. Firstly, religious instruction was to be in conformity with the Evangelical

Lutheran doctrine of the National Church, but children might be exempted therefrom. Secondly, the legislator had directed schools to include in their curricula, often in conjunction with traditional subjects, certain new topics such as road safety, civics, hygiene and sex education.

17. The administration of State schools in Denmark is largely decentralised. These institutions are run by the municipal council, the highest education authority in each of the some 275 municipalities in that country, as well as by a school commission and a school board.

The school commission (skolekommissionen) is as a general rule composed of eleven members of whom six are elected by the municipal council and five by the parents. The commission, in consultation with the teachers' council and within the limits laid down by law, prepares the curriculum for the schools within its district. The curriculum must be approved by the municipal council. To assist these bodies in the performance of their tasks, the Minister of Education issues guidelines prepared by the State Schools' Curriculum Committee (hereinafter referred to as "the Curriculum Committee"), set up in 1958.

Each State school has a school board (skolenævn) which comprises three or five members; one member is chosen by the municipal council, the two or four others by the parents. The board supervises the school and organises co-operation between school and parents. It decides, upon recommendation from the teachers' council, what teaching aids and in particular what books are to be used by the school and it also determines the distribution of lessons among the teachers.

18. Primary education at private schools or at home must not fall below the standards laid down for State schools; it must cover the same compulsory subjects and be of comparable quality. While a school may be established without any advance approval, it is subsequently supervised by the school commissions in order to ensure, in particular, that adequate instruction is given in Danish, writing and arithmetic. The same applies to education given in the home; if the school commission finds twice in succession that such teaching is inadequate, the parents are required to send the child to a State or private school.

The State supports private schools provided that they have not less than twenty pupils in all and not less than ten pupils per class. The State subsidises 85 per cent of their running costs (principal's and teachers' salaries, maintenance of buildings, heating, electricity, water, cleaning, insurance, etc.). In addition, private schools may be granted government loans on favourable terms for construction and improvement of buildings. As a result, parents who enrol their children at a private school do not in general have to bear school fees in excess of 1,200 Kroner per child per annum; during the 1973/1974 school year their average expenditure scarcely exceeded 1,050 Kroner. The Danish Parliament voted in May 1976 in favour of a proposal which would oblige municipalities to bear a large proportion of the cost of transport for children attending private schools.

The statistics on private schools show that, in the school year 1973/74, there were about seventy "free" schools; one hundred and one private grammar schools without special religious background; twenty-five Catholic schools; nineteen German minority schools; ten schools for members of other religious societies; eight "Christian free" schools; and some thirty-five other schools.

The applicants claim that there are insufficient private schools and that their pupils frequently have to travel long distances to attend them; moreover, parents wishing to send their children to a private school in Copenhagen have to enter them on waiting lists at least three years in advance.

Sex education

19. In Denmark, sex education in State schools has been a topic of discussion for thirty-five years. As early as 1945, sex education was introduced in the State schools of Copenhagen and several institutions outside the capital copied this example. Nevertheless, the Minister of Education spoke against compulsory sex education when the question was raised in 1958.

In 1960, the Curriculum Committee published a "Guide to teaching in State schools" which distinguished between instruction on the reproduction of man and sex education proper. The Committee recommended that the former be integrated in the biology syllabus while the latter should remain optional for children and teachers and be provided by medical staff. The Committee also advised that guidelines for schools be drawn up on the contents of, and the terminology to be used in, sex education.

In a Circular of 8 April 1960, the Minister of Education adopted the Committee's conclusions: as from the school year 1960/61 reproduction of man became a compulsory part of biology lessons whereas an official guide issued by the Ministry, dating from September 1961, specified that only those children whose parents had given their express consent should receive sex education proper.

20. The Danish Government, anxious to reduce the disconcerting increase in the frequency of unwanted pregnancies, instructed a committee in 1961 to examine the problem of sex education (Seksualoplysningsudvalget). The setting up of such a committee had been urged, among others, by the National Council of Danish Women (Danske Kvinders Nationalråd) under the chairmanship of Mrs. Else-Merete Ross, a Member of Parliament, and by the Board of the Mothers' Aid Institutions (Mødrehjælpsinstitutionernes Bestyrelse). Every year the latter bodies received applications for assistance from about 6,000 young unmarried mothers of whom half were below twenty years of age and a quarter below seventeen. In addition, many children, often of very young parents, were born within the first nine months after marriage. Legal abortions, for their part, numbered about 4,000 every year and, according to expert opinions, illegal abortions about 15,000 whereas the annual birth rate was hardly more than 70,000.

21. In 1968, after a thorough examination of the problem, the above-mentioned committee, which was composed of doctors, educationalists, lawyers, theologians and government experts, submitted a report (No. 484) entitled "Sex Education in State Schools" (Seksualundervisning i Folkeskolen m.v., Betænkning Nr. 484). Modelling itself on the system that had been in force in Sweden for some years, the committee recommended in its report that sex education be integrated into compulsory subjects on the curriculum of State schools. However, there should be no obligation for teachers to take part in this teaching.

The report was based on the idea that it was essential for sexual instruction to be adapted to the children's different degrees of maturity and to be taught in the natural context of other subjects, for instance when questions by the children presented the appropriate opportunity. This method appeared to the committee particularly suited to prevent the subject from becoming delicate or speculative. The report emphasised that instruction in the matter should take the form of discussions and informal talks between teachers and pupils. Finally it gave an outline of the contents of sex education and recommended the drawing up of a new guide for State schools.

22. In March 1970, the Minister of Education tabled a Bill before Parliament to amend the State Schools Act. The Bill provided, inter alia, that sex education should become obligatory and an integrated part of general teaching in State primary schools. In this respect, the Bill was based on the recommendations of the committee on sex education, with one exception: following a declaration from the National Teachers' Association, it did not grant teachers a general right of exemption from participation in such instruction.

The Bill had received the support not only of this Association but also of the National Association of School and Society representing on the national level education committees, school boards and parents' associations, and of the National Association of Municipal Councils.

Section 1 para. 25 of the 1970 Act, which was passed unanimously by Parliament and became law on 27 May 1970, added "library organisation and sex education" to the list of subjects to be taught, set out in Section 17 para. 6 of the State Schools Act. Accordingly the latter text henceforth read as follows (Bekendtgørelse No. 300 of 12 June 1970):

"In addition to the foregoing, the following shall also apply to teaching in primary schools:

road safety, library organisation and sex education shall form an integral part of teaching in the manner specified by the Minister of Education.

..."

The Act entered into force on 1 August 1970. As early as 25 June, a Circular from the Minister of Education (Cirkulære om ændring af folkeskoleloven) had advised municipal councils, school commissions, school boards, teachers' councils and headmasters of schools outside Copenhagen "that further texts, accompanied by new teaching instructions, on sex education would be issued". The

Circular specified that "henceforth, parents (would) still have the possibility of exempting their children from such education and teachers that of not dispensing it".

23. After the passing of the 1970 Act, the Minister of Education requested the Curriculum Committee to prepare a new guide to sex education in State schools intended to replace the 1961 guide (paragraph 19 above). The new guide (Vejledning om seksualoplysning i folkeskolen, hereinafter referred to as "the Guide") was completed in April 1971; it set out the objectives of sex education as well as certain general principles that ought to govern it, and suggested detailed curricula for the various classes.

24. On the basis of the recommendations in the Guide, the Minister of Education laid down in Executive Order No. 274 of 8 June 1971 (Bekendtgørelse om seksualoplysning i folkeskolen) the rules of which he had given notice in his Circular of 25 June 1970.

The Executive Order - which applied to primary education and the first level of secondary education in State schools outside Copenhagen – was worded as follows:

"Section 1

- (1) The objective of sex education shall be to impart to the pupils knowledge which could:
 - (a) help them avoid such insecurity and apprehension as would otherwise cause them problems;
 - (b) promote understanding of a connection between sex life, love life and general human relationships;
 - (c) enable the individual pupil independently to arrive at standpoints which harmonise best with his or her personality;
 - (d) stress the importance of responsibility and consideration in matters of sex.
- (2) Sex education at all levels shall form part of the instruction given, in the general school subjects, in particular Danish, knowledge of Christianity, biology (hygiene), history (civics) and domestic relations. In addition, a general survey of the main topics covered by sex education may be given in the sixth and ninth school years.

Section 2

- (1) The organisation and scope of sex education shall be laid down in or in accordance with the curriculum. Assistance in this respect is to be obtained from the Guide issued by the State Schools' Curriculum Committee. If the special instruction referred to in the second sentence of Section 1 para. 2 is provided in the sixth and ninth years, a small number of lessons shall be set aside each year for this purpose.
- (2) Restrictions may not be imposed upon the range of matters dealt with in accordance with sub-section 1 so as to render impossible the fulfilment of the purpose of sex education.
- (3) The restrictions on the carrying out of sex education in schools, as indicated in Part 4 of the Guide, shall apply regardless of the provisions of the curriculum.

Section 3

- (1) Sex education shall be given by the teachers responsible for giving lessons on the subjects with which it is integrated in the relevant class and in accordance with the directives of the principal of the school. If it is not clear from the curriculum which subjects are linked to the various topics to be taught, the class teachers shall distribute the work, as far as need be, in accordance with the recommendation of the teachers' council; this latter opinion must be approved by the school board pursuant to section 27 para. 5 of the School Administration Act.
- (2) A teacher cannot be compelled against his will to give the special instruction in the sixth and ninth years referred to in the second sentence of section 1 para. 2.

Section 4

- (1) The present Order shall come into force on 1 August 1971.
- (2) At the same time the right of parents to have their children exempted from sex education given at school shall cease. They may nevertheless, on application to the principal of the school, have them exempted from the special instruction referred to in the second sentence of section 1 para. 2.
- (3) ..."

25. A Ministry of Education Circular (Cirkulære om seksualoplysning i folkeskolen), also dated 8 June 1971 and sent to the same authorities as that of 25 June 1970 (paragraph 22 above), gave the

recipients, inter alia, certain particulars on the preparation of State school curricula in this field. It drew, in particular, their attention to the fact that "it was for the school commission, after discussion with the joint council of teachers, to prepare draft provisions governing sex education to be included in the curricula of the schools of the municipality". Recalling that these provisions may take the form of a simple reference to the recommendations in the Guide, the Circular pointed out that the Guide gave, for the fifth to tenth year classes, various possibilities as regards the manner and scope of teaching. Thus, if there were a simple reference to the Guide, "it is for the institution (teachers' council) to take a decision in this respect with the agreement of the school board".

26. The objectives set out in the Executive Order of 8 June 1971 were identical with those of the Guide, except that the latter contains an addition to the effect that schools must try to develop in pupils openness with regard to the sexual aspects of human life and to bring about such openness through an attitude that will make them feel secure.

27. The principle of integration, provided for in paragraph 2 of section 1 of the Executive Order, is explained as follows in the Guide:

"The main purpose of integration is to place sex guidance in a context where the sexuality of man does not appear as a special phenomenon. Sexuality is not a purely physical matter ... nor is it a purely technical matter On the other hand it is not of such emotional impact that it cannot be taken up for objective and sober discussion. ... The topic should therefore form an integral part of the overall school education ..."

28. As for the definition of the manner and scope of sex education (section 2 para. 1 of the Executive Order), the Guide indicates the matters that may be included in the State school curricula.

In the first to fourth years instruction begins with the concept of the family and then moves on to the difference between the sexes, conception, birth and development of the child, family planning, relations with adults whom the children do not know and puberty.

The list of subjects suggested for the fifth to seventh years includes the sexual organs, puberty, hormones, heredity, sexual activities (masturbation, intercourse, orgasm), fertilisation, methods of contraception, venereal diseases, sexual deviations (in particular homosexuality) and pornography.

The teaching given in the eighth to tenth years returns to the matters touched on during the previous years but puts the accent on the ethical, social and family aspects of sexual life. The Guide mentions sexual ethics and sexual morals; different views on sexual life before marriage; sexual and marital problems in the light of different religious and political viewpoints; the role of the sexes; love, sex and faithfulness in marriage; divorce, etc.

29. The Guide advocates an instruction method centred on informal talks between teachers and children on the basis of the latter questions. It emphasises that "the instruction must be so tactful as not to offend or frighten the child" and that it "must respect each child's right to adhere to conceptions it has developed itself". To the extent that the discussion bears on ethical and moral problems of sexual life, the Guide recommends teachers to adopt an objective attitude; it specifies:

"The teacher should not identify himself with or dissociate himself from the conceptions dealt with. However, it does not necessarily prevent the teacher from showing his personal view. The demand for objectivity is amplified by the fact that the school accepts children from all social classes. It must be possible for all parents to reckon safely on their children not being influenced in a unilateral direction which may deviate from the opinion of the home. It must be possible for the parents to trust that the ethical basic points of view will be presented objectively and soberly."

The Guide also directs teachers not to use vulgar terminology or erotic photographs, not to enter into discussions of sexual matters with a single pupil outside the group and not to impart to pupils information about the technique of sexual intercourse (section 2 para. 3 of the Executive Order).

The applicants claim, however, that in practice vulgar terminology is used to a very wide extent. They refer to a book by Bent H. Claësson called "Dreng og Pige, Mand og Kvinde" ("Boy and Girl, Man and Woman") of which 55,000 copies have been sold in Denmark. According to them it frequently uses vulgar terminology, explains the technique of coitus and shows photographs depicting erotic situations.

30. On the subject of relations between school and parents, the Guide points out, inter alia:

"In order to achieve an interaction between sex education at the school and at home respectively, it will be expedient to keep parents acquainted with the manner and scope of the sex education given at school. Parent class meetings are a

good way of establishing this contact between school and parents. Discussions there will provide the opportunity for emphasising the objective of sexual instruction at the school and for making it clear to parents that it is not the school's intention to take anything away from them but rather ... to establish co-operation for the benefit of all parties. It can also be pointed out to parents that the integrated education allows the topic to be taken up exactly where it arises naturally in the other fields of instruction and that, generally, this is only practicable if sex education is compulsory for pupils. ... Besides, through his contacts with the homes the class teacher will be able to learn enough about the parents' attitude towards the school, towards their own child and towards its special problems. During discussions about the sex education given by the school, sceptical parents will often be led to realise the justification for co-operation between school and home in this field as well. Some children may have special requirements or need special consideration and it will often be the parents of these children who are difficult to contact. The teacher should be aware of this fact. When gradually the teacher, homes and children have come to know each other, a relationship of trust may arise which will make it possible to begin sex education in a way that is satisfactory to all parties."

31. The Executive Order No. 313 of 15 June 1972, which came into force on 1 August 1972, repealed the Executive Order of 8 June 1971. The new Order reads:

"Section 1

(1) The objective of the sex education provided in Folkeskolen shall be to impart to the pupils such knowledge of sex life as will enable them to take care of themselves and show consideration for others in that respect.

(2) Schools are therefore required, as a minimum, to provide instruction on the anatomy of the reproductive organs, on conception and contraception and on venereal diseases to such extent that the pupils will not later in life land themselves or others in difficulties solely on account of lack of knowledge. Additional and more far-reaching goals of instruction may be established within the framework of the objective set out in sub-section (1) above.

(3) Sex education shall start not later than in the third school year; it shall form part of the instruction given in the general school subjects, in particular Danish, knowledge of Christianity, biology (hygiene), history (civics) and domestic relations. In addition, a general survey of the main topics covered by sex education may be given in the sixth or seventh and in the ninth school years.

Section 2

The organisation and scope of sex education shall be laid down in or in accordance with the curriculum. If the special instruction referred to in the second sentence of section 1 para. 3 is provided, a small number of lessons shall be set aside for this purpose in the relevant years.

Section 3

(1) Sex education shall be given by the teachers responsible for giving lessons on the subjects with which it is integrated in the relevant class and in accordance with the directives of the principal of the school. If it is not clear from the curriculum which subjects are linked to the various topics to be taught, the class teachers shall distribute the work, as far as need be, in accordance with the recommendation of the teachers' council; this latter opinion must be approved by the school board pursuant to section 27 para. 5 of the School Administration Act.

(2) A teacher cannot be compelled against his will to give the special instruction referred to in the second sentence of section 1 para. 3. Nor shall it be incumbent upon the teacher to impart to pupils information about coital techniques or to use photographic pictures representing erotic situations.

Section 4

On application to the principal of the school, parents may have their children exempted from the special instruction referred to in the second sentence of section 1 para. 3.

..."

32. In a Circular of 15 June 1972 (Cirkulære om ændring af reglerne om seksualoplysning i folkeskolen), sent to the same authorities as that of 25 June 1970 (paragraph 22 above), the Minister of Education stated that the aim of the new Executive Order was to enable local school authorities and, consequently, parents to exert greater influence on the organisation of the teaching in question. In addition, sex education, which "remains an integral part of school education, which is to say that it should form part of the instruction given in obligatory subjects", was to have a more confined objective and place greater emphasis on factual information.

The Circular pointed out that henceforth sex education could be postponed until the third school year.

It also mentioned that, whilst the Executive Order no longer contained a reference to the Guide - which was still in force -, this was to emphasise that the Guide was simply an aid to local school authorities in the drawing up of curricula.

Finally, the Circular gave details on the role of teachers. If a teacher thought he would not be able to take care of this instruction in a satisfactory manner, he should be afforded the opportunity of attending one of the information courses provided by the Teachers' Training College. In addition, the Minister expressly recommended that special consideration be given to the personal and professional qualifications of teachers when courses including sex education are distributed amongst them.

According to the applicants, the result of the Executive Order of 15 June 1972 was to free teachers from the duty of giving instruction in sex. It was alleged that in fact the Minister of Education issued it because many teachers vigorously protested against this duty.

33. On 26 June 1975, the Danish Parliament passed a new State Schools Act (Act No. 313), which became fully effective on 1 August 1976. However, it has not amended any of the provisions relevant to the present case; sex education remains an integral and obligatory part of instruction in the elementary school. Neither has the Act changed the former rules on the influence of parents on the management and supervision of State schools.

While the Bill was being examined by Parliament, the Christian People's Party tabled an amendment according to which parents would be allowed to ask that their children be exempted from attending sex education. This amendment was rejected by 103 votes to 24.

34. Although primary education in private schools must in principle cover all the topics obligatory at State schools (paragraph 18 above), sex education is an exception in this respect. Private schools are free to decide themselves to what extent they wish to align their teaching in this field with the rules applicable to State schools. However, they must include in the biology syllabus a course on the reproduction of man similar to that obligatory in State schools since 1960 (paragraph 19 above).

35. The applicants maintain that the introduction of compulsory sex education did not correspond at all with the general wish of the population. A headmaster in Nyborg allegedly collected 36,000 protest signatures in a very short space of time. Similarly, an opinion poll carried out by the Observa Institute and published on 30 January 1972 by a daily newspaper, the Jyllands-Posten, is said to have shown that, of a random sample of 1,532 persons aged eighteen or more, 41 per cent were in favour of an optional system, 15 per cent were against any sex education whatsoever in primary schools and only 35 per cent approved the system instituted by the 1970 Act.

According to the authors of two articles, published in 1975 in the medical journal *Ugeskrift for Læger* and produced to the Court by the Commission, the introduction of sex education has not, moreover, brought about the results desired by the legislator. On the contrary indeed, the number of unwanted pregnancies and of abortions is said to have increased substantially between 1970 and 1974. The Government argue that the statistics from 1970 to 1974 cannot be taken as reflecting the effects of legislation whose application in practice began only in August 1973.

Facts relating to the applicants

36. Mr. and Mrs. Kjeldsen have a daughter called Karen. She was born in December 1962 and attended St. Jacobi municipal school in Varde. All the municipal schools in this town were still using, until the 1972/73 school year, the curricula adopted in 1969, that is, before the 1970 Act entered into force. In Varde the curriculum changed only with effect from the 1973/74 school year.

37. On 25 April 1971, the applicants asked the Minister of Education to exempt their daughter from sex education, saying they wished to give her this instruction themselves.

On 6 May 1971, the Ministry replied to the effect that a new Executive Order on sex education in State schools was in the course of preparation.

The applicants complained to the Danish Parliament but without any result. They then approached the Parliamentary Ombudsman (Folketingets ombudsmand) who told them on 2 June 1971 that he had no competence to deal with the matter.

38. The Ministry of Education, in a letter of 14 July 1971, advised the applicants that Executive Order No. 274 (paragraph 24 above) had been issued and added that, for practical reasons, it was not possible

to exempt children from integrated sex instruction.

On 5 August 1971, the applicants wrote again to the Ministry of Education, this time enquiring about sex education in private schools. The Ministry told them on 20 September that private schools were not obliged to provide instruction beyond that which, since 1960, they had been obliged to give within the context of the biology syllabus.

Some weeks before, that is, on 31 August 1971, the school commission of Varde had refused a request by the applicants that their daughter should be given free private education.

39. On 13 October 1971, the Ministry replied to a further letter, dated 6 September, in which the applicants had requested new legislation to provide for free education without sex instruction. The Ministry said that it did not intend to propose such legislation and it also refused to arrange for the applicants' daughter to receive separate education. Referring to the reply given to another person who, in the same field, had invoked Article 2 of Protocol No. 1 (P1-2), the Ministry stated that Danish legislation on sex education complied with this provision, particularly in view of the existence of private schools.

On 15 April 1972, the applicants asked the Ministry of Education why the curricula of the Varde municipal schools had not yet been adapted to the new legislation on sex education; the file in the case does not reveal whether the Ministry replied.

40. Meanwhile, the applicants had withdrawn their daughter from the St. Jacobi school and during the 1971/72 school year they educated her at home. In August 1972 they again sent her to the Varde municipal school (Brorsonskolen).

They maintained before the Commission that the nearest private school was nineteen kilometres from their home and that their daughter, who had diabetes, could not be away from home for a long period of time. The Government did not contest these claims.

41. Mr. and Mrs. Busk Madsen have four children, the eldest of whom began school in 1972 at a State school in Åbenrå. They attempted unsuccessfully to have their children exempted from sex instruction.

42. Mr. and Mrs. Pedersen have five children, of whom three were of school age in 1972. Two of them, Ester, born in 1957, and Svend, born in 1965, attended private schools in order to avoid having to follow sex education courses; the third, Hans Kristian, born in 1961, was enrolled at the Poul Paghs Gade municipal school in Ålborg. The applicants paid 660 Kroner a month for Ester, who left the latter school in summer 1972 to attend a private boarding school at Korinth (Fyn), and 75 Kroner for Svend.

The Pedersens had asked the competent authorities – likewise unsuccessfully – to exempt their children from sex instruction. They stated in their application that they were considering sending their third child as well to a private school, if the Commission could not help them.

43. In March 1972, the applicants complained about the use of certain books on sex education at the above-mentioned school. These books had apparently been approved by the school board in consultation with the teachers at the school.

The Education and Culture Committee of the Northern Jutland County Council (Nordjyllands amtsråds undervisnings - og kulturudvalg) decided, however, on 16 June 1972 to uphold the school board's action and this decision was confirmed by the Minister of Education on 13 March 1973.

PROCEEDINGS BEFORE THE COMMISSION

44. The present applications were lodged with the Commission on 4 April 1971 by Mr. and Mrs. Kjeldsen and on 7 October 1972 by Mr. and Mrs. Busk Madsen and Mr. and Mrs. Pedersen. As the Busk Madsens and the Pedersens stated that they regarded their applications as closely linked with that of the Kjeldsens, the Commission decided on 19 July 1973 to join the three applications in accordance with the then Rule 39 of its Rules of Procedure.

All the applicants maintained that integrated, and hence compulsory, sex education, as introduced

into State schools by the 1970 Act, was contrary to the beliefs they hold as Christian parents and constituted a violation of Article 2 of Protocol No. 1 (P1-2).

The Commission took its decision on 16 December 1972 on the admissibility of the Kjeldsens' application, and on 29 May (partial decisions) and 19 July 1973 (final decisions) on the admissibility of the Busk Madsens' and the Pedersens' applications. They were accepted insofar as the applicants challenged the 1970 Act under Article 2 of Protocol No. 1 (P1-2), but rejected, for failure to exhaust domestic remedies (Article 27 para. 3) (art. 27-3), insofar as the applicants were complaining about "the directives issued and other administrative measures taken by the Danish authorities" regarding the manner in which sex education should be carried out.

In their written pleadings on the merits, Mr. and Mrs. Kjeldsen also invoked Articles 8, 9 and 14 (art. 8, art. 9, art. 14) of the Convention.

45. In its report of 21 March 1975, the Commission expressed the opinion:

- that there is no violation of Article 2 of Protocol No. 1 (P1-2) in the existence, per se, of the Danish system of sex education (seven votes against seven, with the President exercising his casting vote in accordance with the then Rule 18 para. 3 of the Commission's Rules of Procedure);
- that there has been no violation of Article 8 (art. 8) of the Convention (unanimously), or of Article 9 (art. 9) (unanimously);
- that no violation of Article 14 (art. 14) of the Convention is disclosed by the facts of the case (seven votes against four, with three abstentions).

The report contains three separate opinions.

FINAL SUBMISSIONS MADE TO THE COURT

46. At the oral hearings on 2 June 1976 the Commission's delegates invited the Court to

"judge whether the introduction of integrated, and consequently compulsory, sex education in State primary schools by the Danish Act of 27 May 1970 constitutes, in respect of the applicants, a violation of the rights and freedoms guaranteed by the European Convention on Human Rights, and in particular those set out in Articles 8, 9 and 14 (art. 8, art. 9, art. 14) of the Convention and Article 2 of the First Protocol (P1-2)".

For their part the Government, whilst making no formal submissions, pleaded the absence of any breach of the requirements of the Convention and of Protocol No. 1 (P1).

AS TO THE LAW

47. The Court must first rule on two preliminary questions.

The first concerns the declaration of withdrawal and the accessory request for a separate trial of their cause made by Mr. and Mrs. Kjeldsen (paragraph 11 above).

The declaration in issue, coming from individuals who are not entitled under the Convention to refer cases to the Court, cannot entail the effects of a discontinuance of the present proceedings (De Becker judgment of 27 March 1962, Series A no. 4, p. 23, para. 4). Paragraph 1 of Rule 47 of the Rules of Court does not apply in the circumstances since it covers solely discontinuance by a "Party which has brought the case before the Court", that is to say by an Applicant Contracting State in proceedings before the Court (paragraph (h) of Rule 1). Admittedly paragraph 2 provides that the Court may, subject to paragraph 3, strike out of its list a case brought before it by the Commission, but the former paragraph makes such a decision dependent upon the existence of "a friendly settlement, arrangement or other fact of a kind to provide a solution of the matter". However, as the principal delegate of the Commission emphasised at the hearing on the morning of 1 June 1976, this condition has not been fulfilled in the Kjeldsens' case. Furthermore, striking the case out of the Court's list - which, moreover, has not been

requested by the Government - would be devoid of any practical interest in the circumstances: being limited to application No. 5095/71, it would still leave pending the applications of Mr. and Mrs. Busk Madsen and Mr. and Mrs. Pedersen (nos. 5920/72 and 5926/72 respectively), which raise the same basic problem.

This latter consideration leads the Court likewise to dismiss the request for a separate trial.

48. In the second place, the Court deems it necessary to delimit the object of the examination that it is required to undertake.

In 1972 and 1973 the Commission accepted the applications insofar as they contested the compatibility of the Act of 27 May 1970, making sex education compulsory in State schools, with Article 2 of Protocol No. 1 (P1-2). The Commission held the applications inadmissible, for non-exhaustion of domestic remedies, insofar as they related to "the directives issued and other administrative measures taken by the Danish authorities" regarding the manner in which such education should be carried out. At paragraph 141 of its report of 21 March 1975, prior to formulating its opinion on the merits of the case, the Commission indicated that its task was to concern itself with "the Danish legislation which provides for integrated sex education" and not with "the manner in which the instruction is given in different schools". At paragraph 142, the Commission specified that by legislation it meant Act No. 235 of 27 May 1970, Executive Order No. 274 of 8 June 1971 and Executive Order No. 313 of 15 June 1972. The summary of facts appearing in the report mentioned additionally the "Guide" of April 1971 and the Ministerial Circular of 8 June 1971 on sex education in State schools. Similarly, the request instituting proceedings of 24 July 1975 spoke of the "Danish legislation" and not of the Act of 27 May 1970 alone. In their memorial of 11 May 1976 and during the hearings of 1 and 2 June 1976, the delegates of the Commission quoted long extracts from the "Guide" of April 1971 and from the Executive Orders of 8 June 1971 and 15 June 1972, although their final submissions referred solely to the Act of 27 May 1970. The delegates expressed the opinion that, while the Court has not to take cognisance of "the specific measures by which sex education was carried out in the respective schools", that is the steps taken "by the municipal authorities and by the parents' associations", it "may ... look into the different measures of a general nature taken by the ... Government"; they were of the view that the Court's supervision extends to the Executive Orders of 8 June 1971 and 15 June 1972 "at least insofar as they serve for the interpretation of the Act" of 27 May 1970. According to the delegates, the Commission and the Government seem to be in agreement on "this interpretation ... of the decisions on admissibility", the drafting of which left room for "certain ambiguities".

In their memorial of 8 March 1976, the Government inferred from paragraph 141 of the Commission's report "that an examination of the case must proceed on the basis that the Act" of 27 May 1970 "is being implemented in pursuance of the precepts laid down in the Executive Order of 15 June 1972". Among "the material on which the Court must act", the Government included the Executive Orders and Circulars of 8 June 1971 and 15 June 1972; as a result, the Registrar, acting on instructions from the President of the Chamber, obtained the text of these instruments from the Commission (Order of 20 March 1976). "To stave off any impact by wrongful ideas about 'the manner in which sex education is carried out'", the Government in addition supplied the registry with an English translation of the "Guide" of April 1971; their Agent read out a passage from the preface to the "Guide" during his oral arguments on 1 June 1976.

Under these conditions, the Court considers that it is called upon to ascertain whether or not the Act of 27 May 1970 and the delegated legislation of general application issued there under contravenes the Convention and Protocol No. 1 (P1), but that the particular measures of implementation decided upon at the level of each municipality or educational institution fall outside the scope of its supervision. Section 1 para. 25 of the Act of 27 May 1970 did no more than supplement the list of compulsory "integrated" subjects by adding, among others, sex education. The Minister of Education was entrusted with fixing the manner of implementing the principle thus enacted (paragraph 22 above). The Executive Orders and Circulars of 8 June 1971 and 15 June 1972, issued in pursuance of this enabling clause, therefore form a whole with the Act itself and only by referring to them can the Court make an appraisal of the Act; if it were otherwise, the reference of the present case to the Court would, moreover, hardly have served any

useful purpose. It should nevertheless be pointed out, as is done by the Commission (paragraph 145 in fine of the report), that the instant case does not extend to the provisions on the special, optional lessons on sex education (sections 1 para. 2 in fine, 2 para. 1 in fine, 3 para. 2 and 4 para. 2 in fine of the Executive Order of 8 June 1971, and subsequently sections 1 para. 3 in fine, 2 in fine, 3 para. 2 and 4 of the Executive Order of 15 June 1972); it covers solely those provisions concerned with the sex education integrated in the teaching of compulsory subjects.

The "Guide" of April 1971, on the other hand, is not a legislative or regulatory text, but a working document intended to assist and advise the local school authorities; while the Executive Order (section 2) and the Circular of 8 June 1971 mentioned it, the same is not true of those of 15 June 1972 (paragraphs 24-25 and 31-32 above). It nevertheless remains in use throughout the whole country and was frequently cited by those appearing before the Court. Consequently, the Court will have regard to the "Guide" insofar as it contributes to an elucidation of the spirit of the legislation in dispute.

Act No. 313 of 26 June 1975, which became fully effective on 1 August 1976, does not call for separate examination as it does not amend any of the provisions relevant to this case (paragraph 33 above).

I. ON THE ALLEGED VIOLATION OF ARTICLE 2 OF PROTOCOL No. 1 (P1-2)

49. The applicants invoke Article 2 of Protocol No. 1 (P1-2) which provides:

"No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions."

50. In their main submission before the Commission, the Government maintained that the second sentence of Article 2 (P1-2) does not apply to State schools (paragraphs 104-107 of the report and the memorial of 29 November 1973), but their arguments have since evolved slightly. In their memorial of 8 March 1976 and at the hearings on 1 and 2 June 1976, they conceded that the existence of private schools perhaps does not necessarily imply in all cases that there is no breach of the said sentence. The Government nevertheless emphasised that Denmark does not force parents to entrust their children to the State schools; it allows parents to educate their children, or to have them educated, at home and, above all, to send them to private institutions to which the State pays very substantial subsidies, thereby assuming a "function in relation to education and to teaching", within the meaning of Article 2 (P1-2). Denmark, it was submitted, thereby discharged the obligations resulting from the second sentence of this provision.

The Court notes that in Denmark private schools co-exist with a system of public education. The second sentence of Article 2 (P1-2) is binding upon the Contracting States in the exercise of each and every function - it speaks of "any functions" - that they undertake in the sphere of education and teaching, including that consisting of the organisation and financing of public education.

Furthermore, the second sentence of Article 2 (P1-2) must be read together with the first which enshrines the right of everyone to education. It is on to this fundamental right that is grafted the right of parents to respect for their religious and philosophical convictions, and the first sentence does not distinguish, any more than the second, between State and private teaching.

The "travaux préparatoires", which are without doubt of particular consequence in the case of a clause that gave rise to such lengthy and impassioned discussions, confirm the interpretation appearing from a first reading of Article 2 (P1-2). Whilst they indisputably demonstrate, as the Government recalled, the importance attached by many members of the Consultative Assembly and a number of governments to freedom of teaching, that is to say, freedom to establish private schools, the "travaux préparatoires" do not for all that reveal the intention to go no further than a guarantee of that freedom. Unlike some earlier versions, the text finally adopted does not expressly enounce that freedom; and numerous interventions and proposals, cited by the delegates of the Commission, show that sight was not lost of the need to ensure, in State teaching, respect for parents' religious and philosophical

convictions.

The second sentence of Article 2 (P1-2) aims in short at safeguarding the possibility of pluralism in education which possibility 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.

The Court thus concludes, as the Commission did unanimously, that the Danish State schools do not fall outside the province of Protocol No. 1 (P1). In its investigation as to whether Article 2 (P1-2) has been violated, the Court cannot forget, however, that the functions assumed by Denmark in relation to education and to teaching include the grant of substantial assistance to private schools. Although recourse to these schools involves parents in sacrifices which were justifiably mentioned by the applicants, the alternative solution it provides constitutes a factor that should not be disregarded in this case. The delegate speaking on behalf of the majority of the Commission recognised that it had not taken sufficient heed of this factor in paragraphs 152 and 153 of the report.

51. The Government pleaded in the alternative that the second sentence of Article 2 (P1-2), assuming that it governed even the State schools where attendance is not obligatory, implies solely the right for parents to have their children exempted from classes offering "religious instruction of a denominational character".

The Court does not share this view. Article 2 (P1-2), which applies to each of the State's functions in relation to education and to teaching, does not permit a distinction to be drawn between religious instruction and other subjects. It enjoins the State to respect parents' convictions, be they religious or philosophical, throughout the entire State education programme.

52. As is shown by its very structure, Article 2 (P1-2) constitutes a whole that is dominated by its first sentence. By binding themselves not to "deny the right to education", the Contracting States guarantee to anyone within their jurisdiction "a right of access to educational institutions existing at a given time" and "the possibility of drawing", by "official recognition of the studies which he has completed", "profit from the education received" (judgment of 23 July 1968 on the merits of the "Belgian Linguistic" case, Series A no. 6, pp. 30-32, paras. 3-5).

The right set out in the second sentence of Article 2 (P1-2) is an adjunct of this fundamental right to education (paragraph 50 above). It is in the discharge of a natural duty towards their children - parents being primarily responsible for the "education and teaching" of their children - that parents may require the State to respect their religious and philosophical convictions. Their right thus corresponds to a responsibility closely linked to the enjoyment and the exercise of the right to education.

On the other hand, "the provisions of the Convention and Protocol must be read as a whole" (above-mentioned judgment of 23 July 1968, *ibid.*, p. 30, para. 1). Accordingly, the two sentences of Article 2 (P1-2) must be read not only in the light of each other but also, in particular, of Articles 8, 9 and 10 (art. 8, art. 9, art. 10) of the Convention which proclaim the right of everyone, including parents and children, "to respect for his private and family life", to "freedom of thought, conscience and religion", and to "freedom ... to receive and impart information and ideas".

53. It follows in the first place from the preceding paragraph that the setting and planning of the curriculum fall in principle within the competence of the Contracting States. This mainly involves questions of expediency on which it is not for the Court to rule and whose solution may legitimately vary according to the country and the era. In particular, the second sentence of Article 2 of the Protocol (P1-2) does not prevent States from imparting through teaching or education information or knowledge of a directly or indirectly religious or philosophical kind. It does not even permit parents to object to the integration of such teaching or education in the school curriculum, for otherwise all institutionalised teaching would run the risk of proving impracticable. In fact, it seems very difficult for many subjects taught at school not to have, to a greater or lesser extent, some philosophical complexion or implications. The same is true of religious affinities if one remembers the existence of religions forming a very broad dogmatic and moral entity which has or may have answers to every question of a philosophical, cosmological or moral nature.

The second sentence of Article 2 (P1-2) implies on the other hand that the State, in fulfilling the

functions assumed by it in regard to education and teaching, must take care that information or knowledge included in the curriculum 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.

Such an interpretation is consistent at one and the same time with the first sentence of Article 2 of the Protocol (P1-2), with Articles 8 to 10 (art. 8, art. 9, art. 10) of the Convention and with the general spirit of the Convention itself, an instrument designed to maintain and promote the ideals and values of a democratic society.

54. In order to examine the disputed legislation under Article 2 of the Protocol (P1-2), interpreted as above, one must, while avoiding any evaluation of the legislation's expediency, have regard to the material situation that it sought and still seeks to meet.

The Danish legislator, who did not neglect to obtain beforehand the advice of qualified experts, clearly took as his starting point the known fact that in Denmark children nowadays discover without difficulty and from several quarters the information that interests them on sexual life. The instruction on the subject given in State schools is aimed less at instilling knowledge they do not have or cannot acquire by other means than at giving them such knowledge more correctly, precisely, objectively and scientifically. The instruction, as provided for and organised by the contested legislation, is principally intended to give pupils better information; this emerges from, inter alia, the preface to the "Guide" of April 1971.

Even when circumscribed in this way, such instruction clearly cannot exclude on the part of teachers certain assessments capable of encroaching on the religious or philosophical sphere; for what are involved are matters where appraisals of fact easily lead on to value-judgments. The minority of the Commission rightly emphasised this. The Executive Orders and Circulars of 8 June 1971 and 15 June 1972, the "Guide" of April 1971 and the other material before the Court (paragraphs 20-32 above) plainly show that the Danish State, by providing children in good time with explanations it considers useful, is attempting to warn them against phenomena it views as disturbing, for example, the excessive frequency of births out of wedlock, induced abortions and venereal diseases. The public authorities wish to enable pupils, when the time comes, "to take care of themselves and show consideration for others in that respect", "not ... [to] land themselves or others in difficulties solely on account of lack of knowledge" (section 1 of the Executive Order of 15 June 1972).

These considerations are indeed of a moral order, but they are very general in character and do not entail overstepping the bounds of what a democratic State may regard as the public interest. Examination of the legislation in dispute establishes in fact that it in no way amounts to an attempt at indoctrination aimed at advocating a specific kind of sexual behaviour. It does not make a point of exalting sex or inciting pupils to indulge precociously in practices that are dangerous for their stability, health or future or that many parents consider reprehensible. Further, it does not affect the right of parents to enlighten and advise their children, 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.

Certainly, abuses can occur as to the manner in which the provisions in force are applied by a given school or teacher and the competent authorities have a duty to take the utmost care to see to it that parents' religious and philosophical convictions are not disregarded at this level by carelessness, lack of judgment or misplaced proselytism. However, it follows from the Commission's decisions on the admissibility of the applications that the Court is not at present seized of a problem of this kind (paragraph 48 above).

The Court consequently reaches the conclusion that the disputed legislation in itself in no way offends the applicants' religious and philosophical convictions to the extent forbidden by the second sentence of Article 2 of the Protocol (P1-2), interpreted in the light of its first sentence and of the whole of the Convention.

Besides, the Danish State preserves an important expedient for parents who, in the name of their creed or opinions, wish to dissociate their children from integrated sex education; it allows parents either

to entrust their children to private schools, which are bound by less strict obligations and moreover heavily subsidised by the State (paragraphs 15, 18 and 34 above), or to educate them or have them educated at home, subject to suffering the undeniable sacrifices and inconveniences caused by recourse to one of those alternative solutions.

55. The applicants also rely on the first sentence of Article 2 (P1-2). In this connection, it suffices to note that the respondent State has not denied and does not deny their children either access to educational institutions existing in Denmark or the right of drawing, by official recognition of their studies, profit from the education received by them (judgment of 23 July 1968 on the merits of the "Belgian Linguistic" case, Series A no. 6, pp. 30-32, paras. 3-5).

II. ON THE ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION TAKEN TOGETHER WITH ARTICLE 2 OF PROTOCOL No. 1 (art. 14+P1-2)

56. The applicants also claim to be victims, in the enjoyment of the rights protected by Article 2 of Protocol No. 1 (P1-2), of a discrimination, on the ground of religion, contrary to Article 14 (art. 14) of the Convention. They stress that Danish legislation allows parents to have their children exempted from religious instruction classes held in State schools, whilst it offers no similar possibility for integrated sex education (paragraphs 70, 80 and 171-172 of the Commission's report).

The Court first points out that Article 14 (art. 14) prohibits, within the ambit of the rights and freedoms guaranteed, discriminatory treatment having as its basis or reason a personal characteristic ("status") by which persons or groups of persons are distinguishable from each other. However, there is nothing in the contested legislation which can suggest that it envisaged such treatment.

Above all, the Court, like the Commission (paragraph 173 of the report), finds that there is a difference in kind between religious instruction and the sex education concerned in this case. The former of necessity disseminates tenets and not mere knowledge; the Court has already concluded that the same does not apply to the latter (paragraph 54 above). Accordingly, the distinction objected to by the applicants is founded on dissimilar factual circumstances and is consistent with the requirements of Article 14 (art. 14).

III. ON THE ALLEGED VIOLATION OF ARTICLES 8 AND 9 (art. 8, art. 9) OF THE CONVENTION

57. The applicants, without providing many details, finally invoke Articles 8 and 9 (art. 8, art. 9) of the Convention taken together with Article 2 of Protocol No. 1 (art. 8+P1-2, art. 9+P1-2). They allege that the legislation of which they complain interferes with their right to respect for their private and family life and with their right to freedom of thought, conscience and religion (paragraphs 54, 55, 72, 89 and 170 of the Commission's report).

However, the Court does not find any breach of Articles 8 and 9 (art. 8, art. 9) which, moreover, it took into account when interpreting Article 2 of Protocol No. 1 (P1-2) (paragraphs 52 and 53 above).

IV. ON THE APPLICATION OF ARTICLE 50 (art. 50) OF THE CONVENTION

58. Having found no breach of Protocol No. 1 (P1) or of the Convention, the Court notes that the question of the application of Article 50 (art. 50) does not arise in the present case.

FOR THESE REASONS, THE COURT

1. Holds by six votes to one that there has been no breach of Article 2 of Protocol No. 1 (P1-2) or of

Article 14 of the Convention taken together with the said Article 2 (art. 14+P1-2);

2. Holds unanimously that there has been no breach of Articles 8 and 9 of the Convention taken together with Article 2 of Protocol No. 1 (art. 8+P1-2, art. 9+P1-2).

Done in French and English, the French text being authentic, at the Human Rights Building, Strasbourg, this seventh day of December, one thousand nine hundred and seventy-six.

Giorgio BALLADORE PALLIERI
President

Marc-André EISSEN
Registrar

Judge Verdross has annexed his separate opinion to the present judgment, in accordance with Article 51 para. 2 (art. 51-2) of the Convention and Rule 50 para. 2 of the Rules of Court.

G. B. P.
M.-A. E.

SEPARATE OPINION OF JUDGE VERDROSS

(Translation)

I have approved paragraphs 1 to 52, 55 and 57 of the judgment but, to my great regret, I have not been able to vote for item 1 of the operative provisions or to accept the grounds given therefore (paragraphs 53-54 and 56). My reasons are as follows:

I am in agreement with the Danish Government's starting point, which is upheld in the judgment, namely that no provision in the Convention prevents the Contracting States from integrating in their school systems instruction on sexual matters and from thereby making such instruction in principle compulsory. The second sentence of Article 2 of Protocol No. 1 (P1-2) thus does not prevent the States from disseminating in State schools, by means of the teaching given, objective information of a religious or philosophical character. However, this freedom enjoyed by the States is limited by the second sentence of Article 2 of Protocol No. 1 (P1-2) according to which parents may require that their religious and philosophical convictions be respected in this teaching.

Since the applicants in the present case consider themselves wronged in relation to their "Christian convictions", we can leave aside the question of how the term "philosophical convictions" is to be understood. It is sufficient for us to examine whether the Government complained against has respected the parents' Christian convictions in the context of sex education.

Admittedly, the applicants' assertions in this respect are not altogether precise. Their complaints are nevertheless sufficiently clear to show what is in issue. The applicants are in fact objecting to the State prematurely giving "detailed" teaching on sexual matters; they contend that the State's monopoly in the realm of education deprives them of their basic right "to ensure their children's education in conformity with their own religious convictions". This makes it quite plain that they are basing their complaints on a well established Christian doctrine whereby anything affecting the development of children's consciences, that is their moral guidance, is the responsibility of parents and, consequently, in this sphere the State may not intervene between parents and their children against the former's wishes.

The applicants admittedly subscribe to the same religion as the great majority of the country, but they belong apparently to a group more faithful to the Christian tradition than their compatriots who are liberal or indifferent to religion. However, as all the rights protected by the Convention and its Protocols are rights of individual human beings, the Court is not called upon to ascertain whether the rights of persons belonging to any given sect are violated or not. The Court has the sole obligation of deciding whether in the instant case the rights of the applicants have been respected or not.

The question thus arises whether the parents concerned in the current proceedings may, in pursuance of Article 2 (P1-2) cited above, oppose compulsory sex education in a State school even if, as in the present circumstances, such education does not constitute an attempt at indoctrination.

To be able to answer this question, it seems to me necessary to distinguish between, on the one hand, factual information on human sexuality that comes within the scope of the natural sciences, above all biology, and, on the other hand, information concerning sexual practices, including contraception. This distinction is required, in my view, by the fact that the former is neutral from the standpoint of morality whereas the latter, even if it is communicated to minors in an objective fashion, always affects the development of their consciences. It follows that even objective information on sexual activity when given too early at school can violate the Christian convictions of parents. The latter accordingly have the right to object.

Article 10 (art. 10) of the Convention, which embodies the freedom of everyone to receive and impart information, cannot be relied upon so as to counter this opinion, since Article 2 of Protocol No. 1 (P1-2) constitutes a special rule derogating from the general principle in Article 10 (art. 10) of the Convention. Article 2 (P1-2) of the said Protocol thus gives parents the right to restrict the freedom to impart to their children not yet of age information affecting the development of the latter's consciences.

According to the judgment, it is true, the aforementioned clause of Article 2 (P1-2) prohibits solely education given with the object of indoctrination. However, this clause does not contain any indication justifying a restrictive interpretation of such a kind. On the contrary indeed, it requires the States, in an unqualified manner, to respect parents' religious and philosophical convictions; it makes no distinction at all between the different purposes for which the education is provided. Since the applicants consider themselves wronged in relation to their "Christian convictions" as a result of the obligation on their children to take part in "detailed" teaching on sexual matters, the Court ought to have restricted itself to ascertaining whether, should there have been any doubt, this complaint tallied or not with the beliefs professed by the applicants.

In this respect, the Court's power seems to me to be similar to that possessed by the bodies responsible, in various countries, for verifying the truth of statements made by persons called up for military service who claim that their religion or philosophy prevents them from carrying arms (conscientious objectors). These bodies have to respect the ideology of the persons concerned once such ideology has been clearly made out.

The distinction between information on the knowledge of man's sexuality in general and that concerning sexual practices is recognised under the Danish legislation itself. While private schools are required under the legislation to include in their curricula a biology course on the reproduction of man, they are left the choice whether or not to comply with the other rules compulsory for State schools in sexual matters. The legislature itself is thereby conceding that information on sexual activity may be separated from other information on the subject and that, consequently, an exemption granted to children in respect of a specific course of the first category does not prevent the integration in the school system of scientific knowledge on the subject.

The Danish Act on State schools does not in any way exempt the children of parents having religious convictions at variance with those of the legislature from attending the whole range of classes on sex education. The conclusion must therefore be that the Danish Act, within the limits indicated above, is not in harmony with the second sentence of Article 2 of Protocol No. 1 (P1-2).

This conclusion is not weakened by the entitlement given to parents to send their children to a private school subsidised by the State or to have them taught at home. On the one hand in fact, the parents' right is a strictly individual right, whereas the opening of a private school always presupposes the existence of a certain group of persons sharing certain convictions in common. Since the State should respect parents' religious convictions even if there existed one couple alone whose convictions as to the development of their children's consciences differ from those of the majority of the country or of a particular school, it can discharge this particular duty only by exempting the children from the classes on sexual practices. Moreover, one cannot fail to recognise that education at a private school, even one subsidised by the State, and teaching at home always entail material sacrifices for the parents. Thus, if the applicants were not entitled to have their children exempted from the classes in question, there would exist an unjustified discrimination, contrary to Article 14 (art. 14) of the Convention, prejudicing them in comparison with parents whose religious and moral convictions correspond to those of the Danish legislature.

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