

CASE-LAW

Decisions by judicial and quasi-judicial bodies on the right to education

Kjeldsen, Busk Madsen and Pedersen v. Denmark (1976)

Court/Forum: European Court of Human Rights

Date: 07/12/1976

Citation: 1 EHRR 711

Brief summary: In this decision, the European Court of Human Rights clarified States' obligations regarding the freedom of parents to educate their children according to their religious and philosophical convictions as guaranteed by Article 2 of Protocol 1 (P1-2) to the European Convention on Human Rights. The Court found that compulsory sex education in public schools does not violate parental freedom.

Key words: Non-discrimination, compulsory education, content of education, acceptability, sex education, pluralism, indoctrination.

Link to full text of the decision [here](#).

Context: In 1970, Denmark introduced compulsory sex education in State primary schools as part of the national curriculum, the aim of which was to, *inter alia*, reduce the increased prevalence of unwanted pregnancies and promote respect for others. This change in the curriculum was introduced by a Bill passed by Parliament (Act No. 235). The Minister of Education then requested the Curriculum Committee prepare a new guide on sex education. Subsequently, two Executive Orders were issued and a new State Schools Act (Act No. 313) introduced that did not change the compulsory provision of sex education in State schools. When the Bill went before the Danish Parliament, the Christian People's Party tabled an amendment according to which parents would be allowed to ask that their children be exempted from sex education. This amendment was rejected by 103 votes to 24.

Facts: The applicants, who were the parents of State primary school students, were not satisfied that the provision of compulsory sex education was in conformity with their Christian convictions. They considered that sex education raised moral questions and so preferred to instruct their children in this sphere. They petitioned on multiple occasions to get their children exempted from sex education. However these requests were not met, resulting in some of the applicants withdrawing their children from their respective State schools.

Problem: The Court was invited 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 of the Convention and Article 2 of the First Protocol (P1-2)’.

P1-2 reads: ‘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’.

Decision: The Court held by 6 votes to 1 that there had not been a breach of the Right to Education as guaranteed by P1-2.

The Court first set about defining the meaning and scope of P1-2. The first sentence guarantees the right to education of everyone. The second sentence guarantees the possibility of pluralism in the provision of education because it is fundamental for the preservation of a democratic society.

The Court noted that the right set out in the second sentence of Article 2 Protocol 1 is an adjunct of the fundamental right to education, and thus corresponds to a responsibility closely linked to the enjoyment and exercise of the right to education. In addition, the Court recalled that the provisions of the Convention and Protocol must be read as a whole; so that the right to education, private and family life, and freedom of religion, thought, conscience, and information are all respected as far as is possible.

In conformity with guaranteeing parental freedom, and protecting other Convention rights, parents are free to have their children educated at home or to send them to private institutions, to which the Danish government pays substantial subsidies. Private schools in Denmark are required, in principle, to cover all the topics obligatory at State schools. However, sex education is not mandatory: ‘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’ (para 34).

This guarantee of parental freedom, however, does not mean that State schools fall outside the ambit of Article 2 Protocol 1 ECHR. The Court asserted that the second sentence of P1-2 applies not just to ‘religious instruction of a denominational character,’ as Denmark claimed, but that ‘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**’ (para 51).

Arising out of reasons of expediency, the setting and planning of the national curriculum generally falls to the State. However, sentence two does not prevent States designing curricula that deal with philosophical or religious matters because most subjects have a philosophical or religious character, in one way or another. It follows that parents, for reasons of impracticality, cannot always object to the content of the curriculum.

There is, however, a line that the State must not cross. The State 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’ (para 53).

The Court found that the legislation prescribing sex education did not amount to indoctrination or advocacy of a specific kind of sexual behaviour, as information was presented in an objective and pluralistic manner. Furthermore, the legislation’s aims were principally to warn students about the ‘excessive frequency of births out of wedlock, induced abortions and venereal diseases,’ and inform students on ‘how to take care of themselves and show consideration for others in that respect’ (para 54). Although this is of a moral character, it is also in the public interest and therefore inconsistent with indoctrination.

Moreover, the parents still maintained the freedom to educate their children at home to instil their own religious convictions and beliefs. Therefore, imparting sex education in itself was not a violation of Article 2, especially as the Danish government generously supports private education and allows for home education; providing a possible exemption from teaching not in conformity with parents’ religious and moral convictions.

Commentary: The religious and moral beliefs of the parents in this case were not altogether opposed to school education. The situation is more complex where religious beliefs are opposed to full-time formal school education. For example, where children are enrolled in religious schools and given religious instruction that is very different from the curriculum in a regular school. Different courts in different jurisdictions may hold differing views (i.e., such a practice should be exempted as a cultural right or it could be seen as a violation of a child’s human right to primary education). A court’s view in such a situation would depend on the Constitution and other legislation together with the cultural and political opinion of such education in that country or region.

Relevant legal instruments:

International:

Article 2 Protocol 1 Right to education
Article 14 Prohibition of discrimination
Article 14 Discrimination
Article 9 Freedom of thought conscience and religion
Article 9 Para 1 Freedom of religion
Article 8 Right to respect for private and family life
‘Travaux Préparatoires’ of the European Convention on Human Rights

National:

Danish Constitution, Article 76 which guarantees the right to free education in State primary schools
Act no. 235 of 27 May 1970
Executive Order no. 274 of 8 June 1971
Executive Order no. 313 of 15 June 1972
Act no. 313 of 26 June 1975

Related cases:

[De Becker v. Belgium \(1962\)](#)

[Case “Relating to certain aspects of the laws on the use of languages in education in Belgium v. Belgium \(merits\) \(1968\)”](#)

[Campbell and Cosans v. UK \(1982\)](#) This case also pertains to education in conformity with parental religious and philosophical convictions.

[Dojan and others v. Germany \(2011\)](#)

Useful links:

Christina Zampas and Pardiss Kebraei (2007) *Promoting Accurate and Objective Sexuality Education*, in Interights Bulletin, ISSN 0268-3709 2007 Volume 15 (4), p. 182-184.