

**APPLICATION/REQUÊTE N° 17187/90**

Zénon BERNARD and others v/LUXEMBOURG

Zénon BERNARD et autres c/LUXEMBOURG

**DECISION** of 8 September 1993 on the admissibility of the application

**DÉCISION** du 8 septembre 1993 sur la recevabilité de la requête

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**Article 9, paragraph 1 of the Convention** *The obligation for children to attend moral and social education lessons (Luxembourg) does not constitute an interference with their exercise of the freedom of thought or conscience. Absence of allegation of religious or any other form of indoctrination.*

**Article 14 of the Convention** *Conditions of application and notion of discrimination (recap of jurisprudence)*

**Article 14 of the Convention, in conjunction with Article 9 of the Convention and Article 2 of the First Protocol** *Exemption from moral and social education lessons granted only to pupils who profess a religious belief whose adherents do not give religious and moral education lessons during school hours. The difference in treatment between those who profess a religious belief and those who invoke philosophical convictions rests on an objective and reasonable justification and satisfies the principle of proportionality.*

**Article 25 of the Convention** *The Commission cannot examine in abstracto the compatibility of a national law with the Convention. A person who shows that he is personally affected by the application of the law he criticises may claim to be a victim of a violation of the Convention.*

### **Article 25 of the Convention and Article 2 of the First Protocol**

- a) *Parents, as legal representatives of their children, may claim to be victims of a violation of the Convention due to the refusal of the authorities to grant the children exemption from lessons, as this refusal directly affects the children*
- b) *In so far as such refusal influences the education of their children, an area in which the State must respect parents' rights, parents may claim to be victims of a violation of the Convention personally and as parents*

### **Article 2 of the First Protocol**

- a) *The term "philosophical convictions" denotes views that attain a certain level of cogency, seriousness, cohesion and importance*
- b) *The right of parents to respect for their religious and philosophical convictions is linked to the exercise of the child's fundamental right to education*

*(TRANSLATION)*

## **THE FACTS**

The applicants are resident in Luxembourg. In the proceedings before the Commission they are represented by Mr Fernand Entringer, a lawyer practising in Luxembourg.

The facts of the case, as submitted by the parties, may be summarised as follows:

In decisions taken on 1 August 1989 the National Council for Moral and Social Education refused to exempt the applicants' children from moral and social education lessons on the ground that the exemption requests did not mention adherence to any religious belief, the only reason for which exemption could be granted under Article 48 of the Law of 10 May 1968 on school reform, as amended by the Law of 16 November 1988.

Article 48 of the Law of 10 May 1968 was originally worded as follows:

Secondary education shall include religious and moral education lessons and lessons in secular morality.

On the basis of a written declaration addressed to the head teacher made by the person responsible for a child's education, every pupil shall be put down for either the religious and moral education lessons or the lessons in secular morality.

On receipt of a written declaration made by the same person, any child shall be exempted from the obligation to attend one or other of these courses."

As this wording of the Article had permitted an increase in the number of persons avoiding both courses of instruction, the Government decided to amend the Article, which is now worded as follows:

"Secondary education shall include religious and moral education lessons and moral and social education lessons

On the basis of a written declaration addressed to the head teacher made by the person responsible for a child's education, or by a pupil over the age of majority, every pupil shall be put down for either the religious and moral education lessons or the moral and social education lessons.

Exemption from both the courses of instruction mentioned above shall be granted to pupils who profess a religious belief whose adherents do not give religious and moral education lessons during school hours

"

On 19 October 1989 the applicants appealed to the Conseil d'Etat seeking annulment of the decisions taken by the National Council for Moral and Social Education on 1 August 1989. The applicants argued in support of their appeals that the above-mentioned Law of 16 November 1988 was contrary to Article 9 of the Convention and Article 2 of Protocol No 1, in that only a religious belief, i.e. a conviction based on faith, was allowed to justify exemption from the lessons in question, whereas philosophical thought, based on reason, was not. However, the Convention articles referred to above made no distinction between freedom of thought, freedom of conscience and freedom of religion, or between religious beliefs and philosophical beliefs.

In a judgment dated 21 March 1990 the Conseil d'Etat dismissed the applicants' appeals, holding as follows:

"The provisions of Article 9, together with those of Articles 8 and 10, of the European Convention on Human Rights guarantee the right of everyone to 'respect for his private and family life', 'freedom of thought, conscience and religion', 'freedom of expression' and 'freedom to hold opinions and to receive and impart information and ideas'

The same rights are guaranteed by Article 18 of the International Covenant on Civil and Political Rights

The rights thus enunciated are subject, under these same Articles, 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 State must, when organising the curriculum, comply with the provisions of Article 2 of the Protocol mentioned

These provisions are intended to safeguard the possibility of educational pluralism, guaranteeing the objective, critical and pluralist dissemination of the information and knowledge included in the curriculum, and removing the risk of any indoctrination which might be thought not to respect parents' religious or philosophical convictions

Moral and social education lessons, as provided for by the Law of 16 November 1988, must be based on the study of human rights and must be organised in such a way as to guarantee a plurality of opinions

Consequently, the Law of 16 November 1988 is not in breach of the provisions of the European Convention on Human Rights, nor of Article 2 of Protocol No 1 to that Convention, nor of Article 18 of the International Covenant on Civil and Political Rights

It follows that the National Council for Moral and Social Education, in rejecting on 1 August 1989 the petitioners' requests that their children be exempted from moral and social education lessons, correctly applied the law "

## COMPLAINTS

The applicants consider that the rejection by the National Council for Moral and Social Education of their requests for exemption from moral and social education lessons on the ground that Article 48 of the Law of 16 November 1988 authorised such exemption only in cases where 'the pupils profess a religious belief whose adherents do not give religious education lessons during school hours' gave favourable treatment to religious convictions to the detriment of philosophical convictions. It thus established discrimination between these two types of conviction and for that reason infringed the provisions of Article 9 of the Convention and Article 2 of Protocol No 1

Secondly, the applicants consider that the Conseil d'Etat, in basing its judgment on the content of the curriculum when the question raised in their appeal pleading was intended to secure a ruling on the compatibility of the above mentioned Articles of the

Convention with Article 48 of the Law of 16 November 1988, also violated Article 9 of the Convention and Article 2 of Protocol No. 1

## THE LAW

The applicants complain of the decisions in which the requests for exemption from moral and social education lessons they had submitted on behalf of their children were rejected. They consider that these decisions, taken pursuant to Article 48 of the Law of 16 November 1988, infringe the principle of equality between the freedom of thought, the freedom of conscience and the freedom of religion guaranteed by Article 9 of the Convention and Article 2 of Protocol No. 1.

They maintain that Article 48 of the Law of 16 November 1988 authorises the State to place religious convictions in a more favourable position than philosophical convictions, since only a religious belief permits those pupils who profess it to be exempted from both courses of instruction.

Consequently, the applicants consider that the question of the alleged violation of Article 9 of the Convention and Article 2 of Protocol No. 1 should be taken as a question concerning discriminatory treatment.

1. The Government first pleads inadmissibility on the ground that the applicants are not victims. They assert in that connection that the applicants have not explained why the decisions taken by the National Council for Moral and Social Education constituted a violation of the rights guaranteed by the Convention, and in particular by Article 9 thereof and Article 2 of Protocol No. 1.

According to the Government, the applicants, who have not established that at any time they were prevented from manifesting their philosophical convictions, are really seeking a general and abstract scrutiny of the legislation in question in the light of the Convention.

The applicants contest the Government's argument. They maintain that pluralism and tolerance require respect for the opinions of others and presuppose equal treatment for all, whether the convictions they profess as individuals are religious or philosophical.

They maintain that it was not so in the present case, since their children, who had invoked philosophical convictions in support of their exemption requests, were not able to obtain exemption, unlike pupils who professed a religious belief whose adherents did not give religious education lessons during school hours.

The applicants maintain that the discrimination suffered by their children gives them sufficient interest to justify applying to the Commission.

The Commission recalls that under Article 25 para 1 of the Convention it can receive an application from a person, non-governmental organisation or group of individuals only if such person, non-governmental organisation or group of individuals can claim to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention

Moreover, it has been established by the case-law of the Convention institutions that the Commission is competent to examine the compatibility of domestic legislation with the Convention only with respect to its application in a concrete case, while it is not competent to examine *in abstracto* its compatibility with the Convention (cf. No. 11036/84, Dec. 2.12.85, D R. 45 p. 211).

Admittedly, in this case, the decisions complained of by the applicants were taken by the National Council for Moral and Social Education in pursuance of Article 48 of the Law of 16 November 1988. However, Article 25 of the Convention does not prohibit claims by individuals that a law infringes their rights where they can show that they have been personally affected by application of the law they complain of (cf No. 11036/84, cited above).

The Commission considers that the applicants, as the legal representatives of their children, can indeed claim to be victims of the refusal to grant exemption from moral and social education lessons, as that decision directly affects their children

It further considers that the applicants can also, both personally and as parents, claim to be victims of the decision taken by the National Council for Moral and Social Education in so far as that decision influences the education of their children, an area in which the State must respect parents' rights

It follows that the plea of inadmissibility based on the allegation that the applicants lack victim status cannot be upheld.

2. With regard to the merits of the application, the Commission notes that the applicants' complaints essentially concern the allegedly discriminatory consequences of the legislation reforming secondary education in Luxembourg. It will accordingly examine the case in the light of Article 14 of the Convention taken in conjunction with Article 9 and Article 2 of Protocol No. 1

Article 14 is worded as follows:

"The enjoyment of the rights and freedoms set forth in this 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."

Article 9 provides as follows

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 in private, to manifest his religion or belief, in worship, teaching, practice and observance

2 ( )"

Lastly, Article 2 of Protocol No 1 reads as follows

"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 Government consider that the application is manifestly ill-founded

They submit that the State must, in discharging its obligation to educate and train young people, give them all the theoretical and practical knowledge necessary for the development of the human person. The introduction of moral education lessons therefore formed part of the exercise of the functions it assumed in relation to education.

The Government admit that in exercising its functions the State must endeavour to guarantee educational pluralism by removing the risk of any indoctrination which might be thought not to respect parents' religious or philosophical convictions.

The Government consider it important to describe the content of the moral and social education lessons given to secondary and technical secondary pupils, and point out that the main aim is to make pupils aware of the problems encountered in the modern world. To that end, pupils are encouraged to think about the concepts of equality and liberty, with reference to the Declaration of Human Rights, *inter alia*.

The Government also point out that, pursuant to Article 6 of the Law of 16 November 1988, it is the responsibility of the National Council for Moral and Social Education to "ensure that moral and social education lessons are taught in a spirit of philosophical and ideological objectivity."

They maintain that the above information shows sufficiently clearly that moral and social education lessons are intended to give pupils information about the various religions and moral philosophies. Not owing allegiance to any particular philosophical school or opinion, the Government consider it difficult to establish any interference by the respondent State with the applicants' freedom of thought and conscience or their philosophical convictions.



Lastly, with regard to the right of pupils "who profess a religious belief whose adherents do not give religious and moral education lessons" to be exempted from religious and moral education lessons and from moral and social education lessons, the Government consider that this possibility is not, as the applicants allege, a benefit or advantage, but rather a "second best" solution.

The applicants consider that the Government's arguments fail to answer the questions they raised in their application. They point out in that connection that the issue was the difference in treatment between pupils with religious convictions and those who, like their own children, invoked philosophical convictions.

They maintain that the Government, by basing their argument on the content of moral and social education lessons, have dodged the issue of discrimination

The Commission recalls that Article 14 has no independent existence, but plays an important role by complementing the other normative provisions of the Convention. A measure which is in itself in conformity with one of the normative provisions of the Convention may, however, infringe that provision taken in conjunction with Article 14 if it is applied in a discriminatory manner. It is therefore sufficient for the subject-matter of the application to fall within the scope of an Article which protects a particular freedom for it to be validly alleged that there has been a violation of the principle of non-discrimination (see, among other authorities, Eur. Court H.R., *Marckx* judgment of 13 June 1979, Series A no 31, pp 15-16, para. 32, and *Inze* judgment of 28 October 1987, Series A no. 126, p 17, para 36)

With regard to the freedom of thought, conscience and religion guaranteed by Article 9 of the Convention, the Commission considers that the obligation for the applicants' children to attend moral and social education lessons does not constitute an interference with exercise of the freedom of thought or conscience. It further notes that the applicants do not maintain that by participating in these lessons their children would be exposed to religious indoctrination or any other form of indoctrination

As regards the State's obligation to respect the rights of parents, as set forth in Article 2 of Protocol No. 1, the Commission notes that the applicants do not maintain that the lessons, as taught, conflict with their philosophical convictions either. It further notes that the applicants have not described the nature of their philosophical convictions in any detail. It recalls that the word "convictions" denotes views that attain a certain level of cogency, seriousness, cohesion and importance (cf. Eur. Court H.R., *Campbell* and *Cosans* judgment of 25 February 1982, Series A no. 48, p. 16, para 36).

The Commission further observes that parents' convictions, for the purposes of Article 2 of Protocol No. 1, are convictions which do not conflict with the child's fundamental right to education. Where, instead of supporting the child's right to education, the parents' rights come into conflict with it, the child's rights must prevail (see No. 13887/88, Dec 5 2 90, D R 64 p. 158)

Even supposing that the facts complained of fall within the scope of Article 9 of the Convention and of Article 2 of Protocol No 1, and that Article 14 is consequently applicable, the Commission recalls that, in the enjoyment of the rights and freedoms guaranteed by the Convention, Article 14 affords protection against different treatment, without an objective and reasonable justification, of persons in similar situations (see, among other authorities, Eur Court HR, *The Sunday Times v the United Kingdom* (no 2) judgment of 26 November 1991, Series A no 217, p 32, para 58, and *Hoffmann v Austria* judgment of 23 June 1993, Series A no 255 C, p 58, para 31)

It must first be determined whether the applicants can complain of such a difference in treatment

The amendment of Article 48 introduced by the Law of 16 November 1988 transformed the exemption pure and simple provided for in the Law of 10 May 1968 into exemption in certain specific conditions. From that time on only pupils professing a religious belief whose adherents do not give religious and moral education lessons have been able to obtain exemption from both courses of instruction

The Commission notes that the new legislation introduces different treatment as between those who profess a religious belief and those who invoke philosophical convictions not constituting religious convictions

Such a difference in treatment is discriminatory if it has no "objective and reasonable justification", that is if it does not pursue a 'legitimate aim' and if there is no "reasonable relationship of proportionality between the means employed and the aim sought to be realised" (see, among other authorities, Eur Court HR, *Darby* judgment of 23 October 1990, Series A no 187, p 12, para 31)

It appears from the preamble of the bill brought before parliament in 1988 that the legislature's aim was to reduce the number of pupils seeking exemption with a view to giving all young people moral education lessons. The percentage of pupils granted exemption from both courses of instruction had in fact risen from 2% in 1968 to nearly 30% in 1987

The above aim can be considered legitimate in that, by requiring pupils to choose between religious and moral education lessons on the one hand and moral and social education lessons on the other, it is possible to transmit to young people rules of conduct which are necessary for the preservation of a democratic society

It must therefore be determined whether the second condition was also satisfied

The Luxembourg parliament introduced the principle of conditional exemption, whereby, contrary to what was laid down in the Law of 10 May 1968, only pupils professing "a religious belief whose adherents do not give religious and moral education lessons during school hours" can be granted exemption from both courses of

instruction. However, in making exemption conditional on adherence to a religious belief, the legislature did not, as the applicants allege, treat freedom of religion more favourably than the other freedoms set forth in Article 9 of the Convention. The Commission considers that the possibility of exemption from the two courses of instruction in question extended to the category of pupils professing a religious belief is justified by the State's obligation to respect religious and philosophical convictions.

Furthermore, the Commission cannot see in what way the legislature, in deciding to require the applicants' children to attend moral and social education lessons, could have failed to respect the applicants' philosophical convictions. The Commission refers in this connection to the Conseil d'Etat's judgment of 21 March 1990 in which it affirmed that moral and social education lessons, as provided for in the Law of 16 November 1988, should involve the study of human rights in particular and should be organised in such a way as to guarantee a plurality of opinions. The Commission accordingly concludes that there was a reasonable relationship of proportionality between the means employed and the aim sought to be realised.

It follows that the application is manifestly ill-founded and must be rejected pursuant to Article 27 para 2 of the Convention.

For these reasons, the Commission, by a majority,

**DECLARES THE APPLICATION INADMISSIBLE**