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THE FACTS (2)

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(1) A similar decision was taken the same day by the Commission on the

admissibility of Application No 5920/72, Arne and Inger Busk Madsen

against Denmark.

(2) see page 96.

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THE LAW

1. The applicants have complained that the system of compulsory sex

education in Danish public schools violates Article 2 of Protocol No.

1 (P1-2) which provides that: "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".

2. The Commission first observes that the applicants' complaint

relates both to the Act of 27 May 1970, which laid down the principle

of compulsory sex education and authorised the Minister of Education

to issue regulations as to how this instruction should be given, and

also to the directives issued and other administrative measures taken

by the Danish authorities regarding the manner in which such education

should be given including the use of certain textbooks. The Commission

further observes that similar complaints under Article 2 of Protocol

No. 1 (P1-2) have been raised before it in Application No 5095/71,

introduced against Denmark by Viking and Annemarie Kjeldsen.

The Commission obtained the written and oral observations of the

parties on the admissibility of that application. It was then submitted

on behalf of the respondent Government that the application should be

rejected on the ground that the applicants had failed to exhaust the

domestic remedies available to them under Danish law; alternatively,

that the application should be declared inadmissible as being

incompatible with the provisions of the Convention; and in the further

alternative, that it should be declared inadmissible as being

manifestly ill-founded.

As regards the first ground the respondent Government argued that the

applicants could, under Article 63 of the Danish Constitution have

brought a court action against the Minister of Education claiming that

the Minister be ordered to recognised their right to have their

daughter exempted from obligatory sex education. The Commission found

in its decision on admissibility of 16 December 1972 that, by failing

to bring such court proceedings, the applicants had not complied with

the conditions in Article 26 (Art. 26) of the Convention as to the

exhaustion of domestic remedies, insofar as their application relates

to the directives issued by the Minister of Education and other

administrative authorities regarding the manner in which the sex

education referred to in the 1970 Act should be carried out". This part

of the application was therefore rejected under Article 27 (3)

(Art. 27-3) of the Convention. On the other hand, the Commission

concluded that there was no effective domestic remedy available with

regard to the provisions of the 1970 Act embodying the principle of

compulsory sex education. It followed that, in this respect, the

application could not be rejected as inadmissible under Article 26

(Art. 26) of the Convention. The Commission then stated:

"Without in any way prejudicing its final opinion as to the

interpretation of Article 2 of Protocol No. 1 (P1-2), the Commission

is nevertheless fully satisfied that the applicants' complaint cannot

be considered as clearly falling outside the scope of this Article. The

complaint cannot therefore, as submitted by the respondent Government,

be rejected as being incompatible ratione materiae with the provisions

of the Convention. On the contrary, the Commission considers that the

complaint raises important and complex issues under Article 2 of

Protocol No. 1 (P1-2) whose determination should depend on an

examination of the merits of the case."

This part of the application was therefore declared admissible.

3. Having regard to the similarity of the issues raised in the

present application and in Application No 5095/71, the Commission has

naturally examined the question of admissibility of the present case

in the light of its above decision of 16 December 1972. The applicants

have confirmed that they have not brought any proceedings under Article

63 of the Danish Constitution in respect of their present complaints.

The Commission's findings in the decision of 16 December 1972 as

regards the application of the domestic remedies' rule in Article 26

(Art. 26) of the Convention therefore apply to the present case. It

follows that this application must also be declared inadmissible under

Article 27 (3) (Art. 27-3), of the Convention insofar as it relates to

the directives issued and other administrative measures taken by the

Danish authorities regarding the manner in which the sex education

referred to in the 1970 Act should be carried out.

4. For the same reasons the present application can apparently not

be rejected as inadmissible under Article 26 (Art. 26) of the

Convention or on any other ground, insofar as the applicants complain

that the Act of 27 May 1970 providing for obligatory sex education in

the public schools constitutes a violation of Article 2 of Protocol No.

1 (P1-2). The Commission therefore decides to give notice, in

accordance with Rule 45, 3 b) of the Commission's Rules of Procedure,

of this part of the application to the respondent Government and to

invite the Government to state whether, in view of the similarity

between the issues raised in the present case and in Application No

5095/71, they are prepared to waive their right to submit observations

in writing on the admissibility issue and to accept that the

application be declared admissible without oral explanations being

given by the parties at a hearing. In the meanwhile, the Commission

adjourns its examination of this part of the application.

For these reasons, the Commission

1. ADJOURNS ITS EXAMINATION OF THE APPLICATION INSOFAR AS THE

APPLICANTS COMPLAIN THAT THE ACT OF 27 MAY 1970 PROVIDING FOR

OBLIGATORY SEX EDUCATION IN THE PUBLIC SCHOOLS CONSTITUTES A VIOLATION

OF ARTICLE 2 OF PROTOCOL NO. 1 (P1-2).

2. DECLARES INADMISSIBLE THE APPLICATION INSOFAR AS IT RELATES TO

THE DIRECTIVES ISSUED AND OTHER ADMINISTRATIVE MEASURES TAKEN BY THE

DANISH AUTHORITIES REGARDING THE MANNER IN WHICH SUCH SEX EDUCATION

SHOULD BE CARRIED OUT.