

## 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 recognise 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.