CONFIDENTIAL

COUNCIL OF EUROPE

EUROPEAN COMMISSION
OF HUMAN RIGHTS

APPLICATIONS Nos. 5095/71, 5920/72 and 5926/72

BY

Viking and Annamarie KJELDSEN

Arne and Inger BUSK MADSEN

AND

Hans and Ellen PEDERSEN

AGAINST

DENMARK

REPORT OF THE COMMISSION

(Adopted on 21 March 1975)

STRASBOURG

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I. INTRODUCTION

1. The following is an outline of the cases as they have been submitted by the parties to the European Commission of Human Rights.

2. The applicants are all Danish citizens and all of them live in Denmark. Mr. Kjeldsen is a galvaniser and Mrs. Kjeldsen is a schoolteacher, they were born in 1913 and 1921 respectively, their home is in Varde. Mr. Busk Madsen was born in 1934 and is a clergyman, his wife was born in 1942 and is a schoolteacher. They live in Åbenrå. Mr. Pedersen was born in 1930 and is a clergyman. Mrs. Pedersen was born in 1932 and is a housewife. They come from Ålborg.

3. All three couples have children of school age. The Kjeldsens have a teenage daughter, the Busk Madsens have four children, the eldest of whom began school in 1972 and the Pedersens have five children of whom at least three are now in school.

The substance of the applicants' complaints

4. On 10 March 1970 the Danish Minister of Education tabled a Bill to amend the Act relating to Public Schools (Lov om aendring af lov om folkeskolen). This Bill, which received the Royal Assent on 27 May 1970, contained, inter alia, a provision whereby sex education was to become a compulsory and integrated part of the curriculum in Danish public schools (1). Before the passing of this Act, it had been obligatory for pupils in the public schools to learn about the "reproduction of man". This had formed part of the biology syllabus. But detailed sex education had been an optional subject and parents had been free to decide whether or not their children were to attend the relevant classes. Teachers had also been free not to give sex instruction if they did not wish to do so.

5. The applicants all objected to the idea of compulsory sex education for their children. They all considered that sex education raised ethical questions and they preferred that their children should receive the necessary instruction in the home rather than at school. They attempted to have their children exempted from the sex instruction in the public schools but their requests were refused. They were told that no child could be exempted from a subject which was integrated with other subjects. From August 1971 until the Autumn of 1972, the Kjeldsens educated their daughter at home, but they were unable to continue with

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(1) Throughout this Report the expression "public schools" and "state schools" are synonymous. Both expressions refer to schools provided by the public or state authorities and for which no direct payment is demanded of parents for the education of their children.

this and eventually returned her to the public school. The Busk Madsens have always sent their children to the public schools, the Pedersens sent two of their children to private schools in order to avoid their being given instruction in sex on the basis of the 1970 Act.

6. The applicants maintain that compulsory sex education is contrary to the beliefs they hold as Christian parents and they say that it constitutes a violation of Art. 2 of Protocol No. 1 to the Convention. In their written pleadings on the merits, the Kjeldsens also alleged violations of Arts. 8 and 14 of the Convention, although these Articles had not previously been cited by any of the parties.

Proceedings before the Commission

7. The present applications were lodged with the Commission on 4 April 1971 (Mr. and Mrs. Kjeldsen) and 7 October 1972 (Mr. and Mrs. Busk Madsen and Mr. and Mrs. Pedersen). They were registered on 26 July 1971 (Mr. and Mrs. Kjeldsen), 15 November 1972 (Mr. and Mrs. Busk Madsen) and 20 November 1972 (Mr. and Mrs. Pedersen).

8. Before deciding on the admissibility of the Kjeldsen case the Commission called for an oral hearing and this took place in Strasbourg on 15 December 1972. The Commission then deliberated and took its decision on 16 December. It decided that insofar as the applicants were complaining directly about the Act of 27 May 1970 and about the fact that this Act provided for obligatory and integrated sex education in the public schools, their complaint was admissible. Insofar as they were complaining about the directives issued and other administrative measures taken by the Danish authorities regarding the manner in which such sex education should be carried out, the application was inadmissible because the applicants had failed to exhaust domestic remedies. As a consequence the Commission has not considered the film and literature offered by the applicants as evidence, in particular the book referred to in paras. 49 and 69 below by the applicants.

9. The Busk Madsen and Pedersen cases were declared inadmissible in part and admissible in part in subsequent decisions taken on 29 May and 19 July 1973. These decisions followed the pattern of the original decisions in the Kjeldsen case. The Busk Madsens and the Pedersens have stated that they regard their applications as closely linked with the Kjeldsen case.

10. For this reason, on 19 July 1973, the Commission decided to join the applications in accordance with Rule 39 of its Rules of Procedure.

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11. Mr. and Mrs. Kjeldsen who were granted legal aid by the Commission have been represented before the Commission by Mr. Jørgen Jacobsen, an advocate practising in Copenhagen and subsequently by Mr. Manfred Roeder, a lawyer practising in Benshaim, Federal Republic of Germany. The other applicants have not been represented but have relied largely on the submissions prepared by the Kjeldsens' representatives.

12. The respondent Government have been represented by Mr. W. McIlquham Schmidt and Mr. Thomas Rechnagel, of the Danish Ministry of Foreign Affairs, as Agents.

13. The present Report has been drawn up by the Commission in pursuance of Art. 31 of the Convention after deliberations and following a vote in plenary session, the following members being present:

MM. J. E. S. FAWCETT, President
G. SPERDUTI, Vice-President
F. ERMACORA
M. A. TRIANTAFYLLIDES
F. WELTER
E. BUSUTTIL
L. KELLBERG
B. DAVER
K. MANGAN
J. CUSTERS
C. A. NØRGAARD
C. H. F. POLAK
J. A. FROWEIN
G. JORUNDSSON

14. It was adopted by the Commission on 21 March 1975 and is now transmitted to the Committee of Ministers in accordance with para. (2) of Art. 31.

15. A friendly settlement of the case has not been reached and the purpose of the Commission in the present Report, as provided in Art. 31 (1), is accordingly:

(1) to establish the facts and

(2) to state an opinion as to whether the facts found disclose a breach by the respondent Government of its obligations under the Convention.

16. A schedule setting out the history of proceedings before the Commission and the Commission's decisions on the admissibility of the applications are attached hereto as Appendices I-VI and an account of the Commission's unsuccessful attempts to reach a friendly settlement is included as a separate document, Appendix VII.

17. The full text of the pleadings of the parties together with the documents lodged as exhibits are held in the archives of the Commission and are available, if required.

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II. ESTABLISHMENT OF THE FACTS

18. The facts of the cases have already been outlined in the introduction and there appears to be no substantial dispute on any question of fact.

19. The essential facts are as follows. Under the Danish Constitution all parents in Denmark have the right to free education for their children in the Danish public schools. But parents are not obliged to send their children to the public schools. If they prefer, they may send them to private schools, or they may educate them at home. The parents' only obligation is to ensure that their children receive an elementary education.

20. Before 1970, pupils in the Danish public schools were obliged to attend classes in a number of traditional subjects, such as writing, arithematic, biology and music. The biology classes included instruction in the "reproduction of man". Special sex education was, however, an optional subject and parents were free to decide whether or not their children should attend classes in sex education. In 1968, a Government Committee on Sex Guidance submitted a Report entitled "Sex Education in Public Schools " (Report No. 484). The Committee had been set up in 1961 and the chief object of its Report was to deal with the problem of unwanted pregnancies. Denmark suffered from a high illegitimacy rate, a high abortion rate and many children born in wedlock were conceived before their parents were married. It was thought that better sex education might improve this situation. The Report recommended that, following the system already adopted in Sweden, sex education should cease to be optional. It should become an integrated and obligatory part of the curriculum in the public schools.

21. In March 1970, the Minister of Education tabled a Bill which amended the Act relating to Public Schools and this Bill inter alia implemented the recommendations of the Committee on Sex Guidance. The Bill received the Royal Assent and became law on 27 May 1970. Sex education was henceforth a compulsory part of the curriculum in the public schools. It had been added to the list of subjects for which there was no special teaching period allocated in the curriculum and which, therefore, had to be integrated with other subjects to enable it to be taught in a natural, objective way according to the age and requirements of the children.

22. The applicants have at all times objected to this compulsory integrated method of sex education. They do not object to sex education as such, for example to the teaching of "reproduction" within the biology syllabus. However, they wish to return to the pre-1970 position whereby detailed sex education was an optional subject from which exemption was possible.

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23. After the passing of the Act of 27 May 1970 (hereinafter referred to as the "1970 Act") the Minister of Education asked the Curriculum Committee for the Folkeskolen, a committee which prepared guidelines on school curricula, to prepare a new Guide to sex education in the Folkeskolen. This Guide was sent out to the schools together with an Executive Order from the Ministry of Education and a Circular dated 8 June 1971.

24. The Executive Order provided that the objectives of sex education at school should be "to impart to the pupils knowledge which could

(a) help the pupils to 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."

These objectives were identical with those in the Guide except that the Guide contained an extra passage saying that the schools should try to develop openness with regard to the sexual aspects of human life and to bring about such openness through an attitude that would make the pupils feel secure.

25. As to objective (c) the Guide recommended teachers to encourage conversation and discussion on the ethical aspects in the senior classes. On this point the Guide said:

> "The teacher should not identify himself with or disassociate himself from the views discussed. This does not, however, debar the teacher from voicing his personal opinion ... Parents must be confident that the fundamental ethical views are presented in an objective and sober manner."

26. The Executive Order provided that sex education should be integrated with instruction given in other traditional school subjects. This principle of integration was explained in the Guide as follows:

> "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 ..."

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The Executive Order provided that the organisation and scope of sexual guidance should be laid down in or be in accordance with the curriculum. By this provision the local school authorities were secured a direct influence on sex education. But the school authorities were not allowed to restrict the subject in such a way as to render impossible the fulfilment of the purpose of sex education. Nevertheless, the Guide set out general restrictions

1. the teacher should not use expressions taken from vulgar sex terminology;

2. the teacher should not give personal advice;

3. the teacher should not give information about the technique of coitus;

4. the teacher should not use erotic photographs.

27. Apart from the integrated sex education, which was obligatory, a Survey of the main topics covered by sex education could be given in the 6th or 7th and 9th school years, i.e. from age 13 upwards. This Survey would be given in special classes and, unlike the integrated sex education, it would be voluntary.

28. By an Executive Order which entered into force on 1 August 1972 the Ministry of Education then repealed the Executive Order of 8 June 1971.

29. The object of the change was, according to the Ministry, to enable local school authorities, and consequently parents, to have greater influence on the organisation of the teaching.

30. The objective of sex education was to be more confined than it had previously been and greater emphasis was to be placed on imparting factual information. Furthermore, it was possible, under the new rules, for sex education to be postponed until the 3rd school year while the Survey could wait until the 7th school year.

31. Sex education remained an integral part of the curriculum but certain teachers, in practice, were not obliged to give instruction in sex if they were not able to do so satisfactorily. This latter point would depend on the demands upon the teacher made by the curriculum or his or her personal or professional qualifications, although courses on this topic would be available for such teachers to attend to enable them to teach the children about sex. From 1970 to 1972 teachers had been obliged to give instruction about sex.

32. The Executive Order which came into force on 1 August 1972, and which repealed the 1971 Executive Order, read as follows:

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"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, of conception and contraception, and of venereal diseases to such extent that the pupils will not later in life land themselves or others in difficulties solely on account of ignorance. Additional and more far-reaching goals of instruction may be established within the framework of the objectives set out in subsection (1) above.

(3) Sex education shall start not later than in the third school year; it shall form part of the instruction given in conventional school subjects, preferably Danish, religious knowledge, 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

Details concerning the organisation of teaching and the scope of sex guidance shall be set out in or in accordance with the curriculum. Schools providing special instruction in accordance with section 1, subsection (3), second sentence, shall set aside for that purpose a minor number of lessons in the school years concerned.

Section 3

(1) Sex guidance shall be given by the teachers of the school who teach subjects in which sex education is incorporated at the age level concerned, and the instruction shall be in accordance with the directives of the principal of the school. If the curriculum does not set out the distribution of topics among subjects, the teaching tasks shall, to the extent necessary, be divided among the teachers concerned in accordance with the recommendations of the teachers' council; these recommendations shall be approved by the school board, cf. the School Administration Act, section 27, subsection (5).

(2) No teacher shall be under obligation to give special instruction as provided for in section 1, subsection (3), second sentence, if he does not want to. Nor shall it be incumbent upon any teacher, if it is against his wish, to impart 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 attending the special instruction referred to in section 1, subsection (3), second sentence."

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III. POINTS AT ISSUE

33. All three cases now raise the issue whether or not compulsory, integrated sex education in the Danish public schools is in conformity with Art. 2 of Protocol No. 1 to the Convention.

34. Other Articles which fall to be considered are Arts. 8 and 9 of the Convention. Art. 2 of Protocol No. 1 should also be examined in conjunction with Art. 14 of the Convention as the applicants allege that this kind of education discriminates against them because of their religious beliefs.

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IV. SUBMISSIONS OF THE PARTIES

Note: Some of the submissions made by the parties during the admissibility proceedings are no longer relevant because parts of the cases, as originally presented, were declared inadmissible, but other submissions made during the admissibility proceedings still stand, and have been maintained by the parties. For ease of reference and presentation, the submissions of the parties are hereinafter summarised under different headings showing whether the arguments were originally presented mainly at the admissibility stage or at the merits stage. The arguments should, however, be read as a whole. It will be noted that most of the applicants' observations are by the Kjeldsens and their representatives. This is because the Busk Madsens and the Pedersens relied strongly on the Kjeldsens' submissions as they considered their applications only as "enclosures" to the former's application.

SUBMISSIONS OF THE GOVERNMENT MADE AT THE ADMISSIBILITY STAGE

35. The respondent Government first explained that although all Danish children have the right to free education in the public schools, under Art. 76 of the Danish Constitution, Danish parents are under no obligation to send their children to the state schools. They may, if they prefer, send them to private schools or they may educate the children at home. The parents' only obligation is to ensure that their children receive an elementary education.

36. Furthermore, parents who send their children to the public schools have a decisive voice in the administration of such schools. They constitute a majority on the school board and, if they object to a particular book or to a particular teaching aid, it will not be used. Although sex education has been integrated and compulsory throughout Denmark since 1970, it is for the Minister of Education to decide from which school year and in connection with which subject it should be given. The administration of public schools is decentralised. They are run by local government councils, school commissions and school boards. Each school board supervises the schools and organises co-operation between schools and parents. School committees draw up the curriculum for their schools. These have to be approved by the local government councils who are in turn assisted by "guidelines" issued by the Minister of Education and prepared by the Curriculum Committee of the public schools.

37. Private schools in Denmark receive substantial subsidies from the State. As a result, a pupil at a private school in Denmark does not generally pay an annual fee in excess of 1,200 kroner.

38. The question of sex education in schools has been considered by various committees during the past thirty-five years. The Curriculum Committee, which was set up by the

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Minister of Education in 1958 and which published a "Guide to Teaching in Public Schools" (1960), distinguished between teaching "the reproduction of man", which is part of the biology syllabus, and sex education proper. "The reproduction of man" has been an obligatory part of the syllabus outside Copenhagen since 1960, but until the 1970 amendment of the Act relating to the Public Schools, sex education was optional both for children and for teachers.

39. In 1961 the Government set up a Committee on Sex Guidance which was composed of prominent doctors, lawyers, teachers, clergy and civil servants. The chief object was to prevent unwanted pregnancies. Denmark suffered at this time from a high abortion rate and a high illegitimacy rate. Many couples, often very young, were married because the bride was pregnant. Such a situation was unfortunate both for the young parents and for their children.

40. The Committee submitted a Report in 1968. The Report was entitled "Sex education in Public Schools" (Report No. 434) and recommended that sex education should henceforth be both an integral and an obligatory part of the school curriculum. It was necessary that once the teaching of sex was integrated into the curriculum it had also to be made obligatory. This was because it was not practical to exempt a child from five minutes teaching in one class and ten minutes teaching in another, and the integration of sex education with other subjects prevented it from becoming "delicate". In making sex education an integrated and obligatory subject Denmark was following the model taken by Swedon some years earlier.

41. The Act of 27 May 1970 was a direct result of the Committee's recommendation. As soon as the Act had provided for obligatory sex education, the Minister of Education requested the Curriculum Committee to prepare a new Guide to sex education in public schools. This was sent out to the school authorities concerned together with an Executive Order and a Circular issued by the Ministry on 8 June 1971. (The relevant details in the said Executive Order 1971 and Guide are set out in paras. 23-32).

42. The respondent Government stressed that as parents form a majority on school boards and are also well represented on school commissions, they have ample opportunity to make sure that teaching aids of which they do not approve, are not used. It is not possible to guarantee that every parent approves of every book used in a particular school, but the system as a whole ensures that the wishes of parents are taken into account as much as possible.

43. In addition to integrated sex education which is obligatory for both pupils and teachers, a survey of the main topics covered by sex education might be given in the sixth or seventh and ninth school years. This special instruction is voluntary for pupils as well as for teachers.

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44. On 15 June 1972 a new Executive Order was published. This revoked the Order of 8 June 1971. The Ministry of Education also issued a Circular on the same day. The Circular explained that the object of the new Order was to give parents greater influence over the organisation of teaching. The objective of sex education had also become more confined, placing greater emphasis on imparting factual information. At the same time, however, minimum requirements were established for the scope of the instruction. Section 3 (2) of the new Order stated that teachers should not be under any obligation to give the additional instruction which was voluntary for the pupils, nor should the teachers be obliged to "impart information about coital techniques or to use photographs representing erotic situations", if they did not wish to. Unlike the 1971 Order the new Order contained no reference to the Guide but the Guide remained unaltered. It was intended by the Ministry to emphasise that the Guide was an aid to local school authorities in drawing up curricula.

THE APPLICANTS' SUBMISSIONS AT THE ADMISSIBILITY STAGE

45. The applicants concede that Art. 76 of the Danish Constitution grants parents the right to free public education for their children and also the right to opt out of the State system and have their children educated privately. But the alternative of private schooling is insufficient to fulfil the obligations of the second sentence of Art. 2 of Protocol No. 1. The second sentence of Art. 2 protects parents when their children are within the State system. To send children to private schools is inconvenient and expensive and may perhaps provide the child with a less qualified education.

46. Again, the applicants do not deny that a majority group of parents could influence the teaching in the state schools; but even the express wishes of the majority of the parents cannot prevail against the terms of the 1970 Act. Anyway the present cases raise the question of minority religious views, not majority views.

47. The applicants think it is their right to choose how their children should learn about sex. They believe that children should be taught about sex in such a way as to explain to them its connection with love and to explain that love is more important than sex.

48. Many people in Denmark think that the official attitude towards sex has gone too far. Sex education in the Danish public schools begins too early. Under the law it is possible to start such instruction as early as the first school year. And because it is the only subject which can be integrated with other subjects, sex education has a special and unnatural position. This makes it possible to "overdose" the subject.

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Instruction in sex would be reasonable if it were given as part of "family knowledge" and if it were optional. The applicants do not oppose the idea of answering the children's questions when they arise naturally. What they oppose is extensive instruction which allows for indoctrination in ethical views to which many parents object.

49. As to the Guide, the applicants consider it a "fantastic deceit". The ethical and moral brakes in the Guide were not really intended to be used. They leave the teachers with an option and the teachers can refuse to follow them. The Guide does not forbid teachers not to use vulgar sex terminology. It recommends them not to use it or dissuades them from using it. In practice the use of vulgar terminology is widespread. The applicants produced copies of a book "Dreng og pige, mand og kvinde" ("Boy and Girl, Man and Woman") by Bent H. Claësson which has sold 55,000 copies in Denmark (a large sale by Danish standards) and which habitually uses vulgar terminology, explains the technique of coitus and shows photographs depicting erotic situations.

50. It should also be noted that while the Act of 27 May 1970 had made integrated sex education compulsory both for pupils and for teachers, there had been strong protests from many teachers and, on 15 June 1972, the Ministry was obliged to issue an order which released the teachers from any duty to give instruction in sex. There is thus now a distinction between teachers and pupils. The teachers are no longer forced to give instruction in sex but the pupils are still obliged to receive such instruction.

51. This is inconsistent with the traditions of a free country. There is no censorship in Denmark but people still have the right not to see pornographic books or films.

52. The Government tried to say that compulsory sex education was like compulsory biology or compulsory history, but this argument is difficult to understand. Sex education and biology are different by their very nature. The Government had also made some interesting remarks on the objectives of "all public education" and one objective was "to reinforce their /the children's/ character". But who is to be the judge of good character? The State or the parents? Are decency, dignity and modesty virtues or vices, the applicants ask.

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THE WRITTEN OBSERVATIONS OF THE APPLICANTS AT THE MERITS STAGE

Observations on the merits presented by the applicants on 17 April 1973 (1)

A. Introduction

53. The applicants first underline that they wish to maintain the submissions of fact and law made by them, or on their behalf, in their application of 4 April 1971, their observations of 5 May 1972 and at the hearing on 15 December 1972.

54. The applicants assert that the Act of 27 May 1970, making sex education obligatory in Danish public schools, is in violation of Art. 2 of Protocol No. 1. They submit that it violates both the first and second sentences of the Article but, in the alternative, if this submission is not accepted, they submit that it violates either the first sentence or the second sentence. Apart from this, the applicants also invoke Arts. 8 and 14 of the Convention, not by themselves, but as being linked with Art. 2 of Protocol No. 1. The applicants anticipate that the Government may object to the reference to these further provisions at this stage, but they point out that it is only when dealing with the merits of a case that its full extent can be seen. Besides which, the applicants did refer, at the admissibility hearing, both to "private and family life" and to minority rights. There is also a passage in the Court's judgment in the Belgian Linguistic Case which supports the view now being put forward.

55. The essential facts in the case are not really in dispute and the main question is, therefore, the interpretation of Art. 2 of Protocol No.1, both alone and in connection with Arts. 8 and 14 of the Convention. The present observations will be composed of two principal sections - one dealing with Art. 2 second sentence and the other with Art. 2 first sentence.

B. Interpretation of the second sentence of Art. 2

56. Art. 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."

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(1) The applicants, Mr. and Mrs. Kjeldsen, have been represented by two different lawyers, Mr. Jacobsen and Mr. Roeder, during the proceedings before the Commission. They changed lawyers after Mr. Jacobsen had submitted observations on the merits of the case on their behalf on 17 April 1973. These were subsequently adopted by the applicants in addition to their own observations of June 1973 (below) and the observations of Mr. Roeder of 27 August 1973 (below).

57. The applicants claim that the second sentence of this provision obliges Denmark to allow parents to exempt their children from sex education in the public schools. They reject as insufficient the respondent Government's reply that there can be no violation of Art. 2 second sentence provided parents have a right to educate their children privately or at home. They further reject the Government's secondary point that even if Art. 2 second sentence is still operative in cases where parents are not obliged to send their children to the public schools, it only gives them the right to have their children exempted from attendance at classes where the religious instruction given is of a denominational character.

58. The applicants submit that the obligations imposed on the State by the second sentence of Art. 2 are absolute and thus apply even when parents are free to send their children to private schools or to educate them at home. The applicants maintain that this view is decisively supported by the Travaux Préparatoires. The applicants agree with the Government that the background of the Article was "the experience of forced regimentation of children and young persons organised by totalitarian régimes before and during the Second World War" and that it was the aim of the provision to "ensure that a revival of such practices be absolutely prohibited". But what the Government does not see is that this aim could not be ensured if one accepted the Government's interpretation of the Article. The Government is saying that the second sentence of Art. 2 becomes inoperative as soon as there is freedom to set up private schools. But the freedom to set up private schools may be worthless unless there is the real, essential financial backing. Besides, the debates of the Consultative Assembly, when discussing the draft Convention, make it clear that the Assembly was talking about education in the public schools. Members of the Assembly also expressed various views which the applicants consider relevant. They pointed out that it was for parents to bring up their children in accordance with the dictates of their consciences whatever these might be (see Mr. Teitgen's address to the Consultative Assembly, 8.12.51, Travaux Préparatoires, Collected Texts, Vol. V, pp. 1199-1209). It was the object of a Christian to educate her children as Christians and that no Minister could assume this responsibility in her place. Furthermore, that though totalitarianism obviously exists under dictatorial governments, it may also develop in democracies (Mrs. Rehling, Travaux Préparatoires, Collected Texts, Vol. V, pp. 1222-1223). Compulsory sex education involves the coercion of a minority. Would the politicians who introduced compulsory sex education feel qualified to introduce compulsory religious education? And do they really feel qualified to decide what affects man's conscience and what does not?

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59. On the occasions when the Consultative Assembly debated the public education system more explicitly, the debate was principally concerned with the question of what positive teaching parents could demand from the Schools. Sir David Maxwell-Fyfe said that in his view a Communist father could not object to the absence of Marxist doctrines in the school curriculum, but there is no real doubt that had members been asked whether parents could have their children exempted from classes where such doctrine was taught the members would have answered that, of course, they could (Travaux Préparatoires, Vol. IV, p. 936). Mr. Renton made it clear that parents could not demand, as of right, that certain teaching be included in the syllabus, but that the object of the provisions was to prevent the State from including in the children's education things which might conflict with the parents' religious and philosophical convictions (Travaux Préparatoires, Collected Texts, Vol. V, p. 1215). It is, of course, perfectly clear that in the present case the applicants do not require that their daughter receive any positive instruction in school. Their only concern is that she should be exempted from teaching which is contrary to their convictions.

60. The applicants submit that their interpretation is confirmed not only by the aim and background of the Travaux Préparatoires but also by other aspects. An amended draft of Art. 2 seems actually to have been opposed by the Consultative Assembly because it could have been interpreted in the way the respondent Government is now seeking to interpret it.

61. A close examination of reservations made by other governments when accepting Art. 2 also gives a clear indication that they do not interpret the Article in the same way as the respondent Government. The Governments of Sweden and the United Kingdom have made reservations showing that they interpret Art. 2 in a way inconsistent with the interpretation of the respondent Government as did the Belgian Government in the Belgian Linguistic Case.

62. The applicants agree with the respondent Government that the interpretation of Art. 2 is not absolutely settled by the judgment of the European Court of Human Rights in the Belgian Linguistic Case, but a careful reading of the judgment favours the applicants' interpretation and also emphasises the point that Art. 2 should be read in the light of Art. 14 of the Convention.

63. The applicants would say, even if the Commission does not consider that it can accept their view of the Travaux Préparatoires, that in any case it cannot accept the opposite view. At worst the influence of the Travaux Préparatoires must be neutral. In this context the applicants quote passages from "Die Rechte und Freiheiten der europäischen Menschenrechtskonvention" (Berlin 1966) by Karl J. Partsch.

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64. Lastly, it is submitted, on this point, that if the Government's interpretation is followed, the first sentence of Art. 2 must be interpreted in such a way that the result is the same as when the second sentence is assumed to include public schools (see below).

65. The respondent Government claims that Art. 2, second sentence, covers only religious education, that this must be narrowly defined so that ultimately it includes only "classes where children are given religious instruction of a denominational character". The applicants submit that there is no ground for agreeing with the Government's interpretation but, in any case, however narrowly Art. 2 is defined, compulsory sex education must amount to a contravention of the Article. The Government invoke "weighty practical considerations" for their view and argue tendentiously about parents who want to exempt their children from "this, that or the other part of the curriculum", or who "pick and choose". None of this has anything to do with the present case. Anyway not only can "practical considerations" not justify a violation of the Convention but it is the respondent Government's own fault that integrated sex education was begun, so that any "practical" inconvenience is the Government's responsibility.

66. The Government thinks that it has support in the Travaux Préparatoires. It is correct that at one time there was a draft of Art. 2 before the Committee of Ministers which included only "religious education" but this was after the respondent Government had already signified its own approval for something wider, "religious and moral teaching ... in conformity with ... religious and philosophical convictions". There are many statements in the Travaux Préparatoires which show that the provision cannot be interpreted in the narrow way advocated by the Government. It is essential to note that it was the phrasing proposed by the Consultative Assembly which prevailed and so the comments made in the Assembly must be considered especially important. The Assembly at no time imagined that the right should be regarded as limited to "religious instruction of a denominational character" and the restricted draft put forward by the Committee of Ministers was put forward for fear that a wide wording, going further than "religious" convictions, might be taken advantage of by Communists or anarchists. In any case it was the wider wording which eventually prevailed.

67. The applicants submit that there is no basis for a restrictive interpretation of the phrase "ensure such education and teaching in conformity with their own religious and philosophical convictions". In fact the Travaux Préparatoires show that the phrase covers a wide field which may be summed up as "a view of life, of religious and other nature". Sex - the link between man and woman - its effect upon family life - all this must form a central part of anyone's view of life. The

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Government's own explanation of the purpose of obligatory sex education shows that such education falls within the scope of the second sentence of Art. 2. The Government has explained that the aims of sex education include promoting "understanding of a connection between sex life, love life, and general human relationships" and also enabling "the individual pupil independently to arrive at standpoints which harmonise with his or her personality". This is the very essence of anyone's philosophy, whether religious or not. The respondent Government has submitted that "the fundamental ethical views are presented in an objective and sober manner". The applicants consider that this is impossible. There is no such thing as objectivity in ethics. But the quotation is informative in that it contains an acknowledgement by the respondent Government that there is an ethical element in sex education. To help explain their own ethical standpoint the applicants quote passages from "The Sacred Intention" (Copenhagen 1969) by Mr. Søren Krarup, a Danish clergyman.

68. In the alternative, the applicants claim that even if the second sentence of Art. 2 is to be construed as narrowly as the respondent Government suggests, obligatory sex education will in any case constitute a violation of Art. 2. The sex education given under the 1970 Act is obviously not based on the teaching of any Christian denomination. It is specifically non-religious. But this very fact makes it denominational and irreligious at the same time so that its obligatory nature is a violation of Art. 2 second sentence.

69. During the admissibility hearing there were references to the book "Dreng og pige, mand og kvinde" ("Boy and Girl, Man and Woman") (Copenhagen 1971) of which 55,000 copies have been sold and which is intended for 10 to 14 year-old children in Danish schools. The applicants do not wish to go into details as to the contents of the book but will just refer to one statement. On page 12 the book says "morality in the Christian sense of the word has absolutely no bearing on our sexual activities". It is exactly this sort of statement that Christian parents find themselves unable to accept. The applicants also quote from Mr. Helmut Thielicke, who is a professor of theology and who has represented sex life as a part of the whole of Christian life. Ronald Goldman in "Readiness for Religion. A Basis for Developmental Religious Education" (London 1965) points out that love is the main theme of Christianity and that sex education at school belongs in the scripture lessons rather than in the biology lessons.

70. In the light of obligatory sex education which may be described as a "systematical, tendentious, irreligious instruction of an idealogically denominational character", it is interesting to note the attitude of the Danish State towards religious instruction itself. In fact, although religious knowledge will in future be taught in Denmark in a way that

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is "informative only" pupils have, nevertheless, the chance to be exempted. This shows that the Government recognises that education on essential matters (and here sex ranks equally with religion) cannot be conducted in such a way as completely to escape the influence of ideology.

71. The Government has shown that it regards religious knowledge as inferior to sex education, which represents an ideological interest. In this sphere the State is the spiritual leader just as it was formerly in the purely religious sphere.

72. The applicants submit that whether their own interpretation of the second sentence of Art. 2 is accepted or whether a more restricted interpretation is accepted, in either case the Article must be interpreted in the light of Art. 8 of the Convention. An individual's attitude towards sex questions clearly falls within the expression "private and family life" and "everyone" must include school children. The State of Denmark must, therefore, respect the right of parents to demand that respect be shown for the private life of their child or for family life. Apart from this, "religious and philosophical convictions" in the second sentence of Art. 2 must be read in the light of, and is pre-eminently bound up with "private and family life". The applicants submit that the limitations of Art. 8 (2) of the Convention are not relevant to the present case.

C. The Danish Act of 25 May 1970 on sex education

73. This Act introduced compulsory sex education. The Ministry is responsible not for the principle but merely for the implementation.

74. The Government in its arguments has attached importance to the decentralisation of the Danish educational system and the safeguarding of the parents' influence. This is quite unimportant. Art. 2 of Protocol No. 1 aims at safeguarding the rights of individual parents whereas the Danish system concerns the right to a contributory influence for all parents as a body. This latter influence is no more significant than the influence of parents as a whole within, e.g. the Danish Parliament.

75. By introducing compulsory sex education, the respondent Government took away from parents the right to decide if, when and in what form their children should be given instruction on matters of sex. The attitude of the Government on this question has in fact changed, because in 1938 it was against the introduction of compulsory sex education. Furthermore, the applicants are by no means alone in their objection to this encroachment. Mr. B., a headmaster in the town of Nyborg, collected 36,000 protest signatures in a very short space of

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time. A research enquiry published in a newspaper in January 1972 showed that of a random sample of 1,532 persons only 33% were in favour of compulsory sex education in the primary schools.

D. Interpretation of the first sentence of Art. 2 of Protocol No. 1

76. This sentence reads "No person shall be denied the right to education".

77. In the Belgian Linguistic Case the Court of Human Rights made it clear that this entailed not only the right to have children taught in the public schools but also that the State should not obstruct the applicants' utilisation of the right. The institution of compulsory sex education in the present case is a psychical obstacle as important as any physical obstacle. As to the question of private schooling, Mr. and Mrs. Kjeldsen have explained that it was 40 km. to the nearest private school and back and the cost would be 100 crowns per month. But they plead that, following the Court's judgment, the possibility of sending their daughter to a private school is quite irrelevant to the question of a violation of the first sentence of Art. 2.

78. The applicants assert that if the second sentence of Art. 2 is interpreted in such a way as not to include public schools when there is freedom to set up private schools, then the first sentence must be interpreted in such a way that the State cannot organise public schools so as to place in the parents' path an essential psychical obstacle. This means that the outcome is the same as if the second sentence were read to include the public schools.

79. In the Belgian Linguistic Case (23.7.68, Series A6, p. 35), the Court said that the object of the "two articles read in conjunction, is more limited: It is to ensure that the right to education shall be secured by each contracting Party to everyone within its jurisdiction without discrimination on the ground, for instance, of language". If the last word "language" is replaced by "religion" (they both appear in Art. 14) the statement is relevant to the present case.

80. The applicants contend that, having instituted obligatory sex education in the primary schools, the State has de facto discriminated on the ground of religion. It is clear that Christian parents may be offended by obligatory sex education while it would not upset non-religious parents. This is clear discrimination in the religious field.

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E. Final observations on Art. 2 of Protocol No. 1

81. The applicants have treated the first and second sentence of Art. 2 separately but this was a question of presentation and, in reality, the Article should be looked at as a whole. In the Travaux Préparatoires there is no sharp dividing line drawn and the applicants are not saying that the 1970 Act contravened either the first sentence or the second sentence. It suffices to say that the Act simply contravenes Art. 2 of Protocol No. 1 without any further clarification.

F. Other provisions of treaties

82. The applicants do not deny that some other treaty provisions may be relevant to the interpretation of Art. 2. But they believe that extreme care should be taken when other treaty provisions are examined because the Convention on Human Rights is unique and it will probably be of greater assistance to look at its provisions and its Travaux Préparatoires than to examine other treaties in United Nations' instruments which may have been ratified by more States and be correspondingly less radical in content. The International Covenant on Civil and Political Rights, mentioned by the Government at the admissibility hearing, has been signed by many States. It is much more recent than the Human Rights Convention and anyway its provisions are almost identical. Nothing can really be gained from comparing or contrasting two instruments of this sort.

OBSERVATIONS OF MR. AND MRS. KJELDSEN - JUNE 1973

83. The applicants state that "the nerve centre of life in (their) Christian religion concerns man's sexual attitude and firmness".

84. It is not true that they could send their daughter to a private school. The nearest private school is 19 km. from their home and a round-trip of 40 km. per day is out of the question for their child who has diabetes. In any case, some private schools have voluntarily accepted sex education and others may be linked with special religious sects. There is no good reason why the applicants' daughter should be forced to leave her present school fellows and teachers just because the Government has decided to introduce compulsory sex education.

85. Before 1849 it was compulsory to attend church in Denmark. Atheist Members of Parliament would be very shocked if it were suggested that such compulsion should be reintroduced but, in fact, they are compelling the applicants to submit to something which, to them, is even more abhorrent.

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86. The Government has explained that the chief object of compulsory sex education was to prevent unwanted pregnancies. This object was to be achieved by teaching children about contraception rather than about reasonable abstinence. Man's will was thus treated as being higher than God's will. Sex education is clearly linked with religion and even leads to a sex cult.

87. It is irrelevant that Danish parents can influence the school curriculum. Parliament has enacted that sex education shall be compulsory in the public schools. Parents cannot escape the consequences of this enactment. Even if they can influence the use of particular books they must submit to the use of books which teach their children about sex.

88. Denmark is nominally a Christian country and it is possible for parents who send their children to denominational private schools to avoid their sexual indoctrination. But why should minorities like Catholics and Jews be privileged? Why should the applicants' religious convictions not be respected too?

OBSERVATIONS OF 27 AUGUST 1973 PRESENTED BY THE APPLICANTS

89. The applicants request the Commission to put the case before the Committee of Ministers or the Court of Human Rights for a decision that the application is well-founded. It is clear from the history of the case that there is no possibility of a friendly settlement. The Danish Act on compulsory sex education violates the whole spirit and intention of the Convention, in particular Art. 2 of Protocol No. 1 but also Arts. 8, 9 and 14 of the Convention.

90. The Act itself is a disgrace to a civilised nation, a sign of decadance. It places Denmark's level of civilisation below that of the South Sea Islanders.

91. The Government has said that it introduced compulsory sex education in order to prevent unwanted pregnancies. But it has quoted no figures to show what has happened since sex education began. In fact, of course, the figures get worse every year, and venereal disease is spreading rapidly.

92. It is not true to say that children are being helped in their insecurity and lack of experience. They are merely being encouraged to fornicate. They become dull, brutish and degraded. The very term "sex education" is nonsense because sex cannot be taught as a purely biological fact. This warps, it does not educate.

93. The Government has referred to the example of Sweden but nothing could be more discouraging. It has the highest rate of venereal disease, juvenile delinquency, divorce and suicide.

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94. It was Lenin who said "If we want to destroy a nation we must begin by undermining its morality" and Bertrand Russell who explained that advances in psychology enable governments to control peoples' personal feelings. ("The Impact of Science on Society" (1955) by Bertrand Russell.)

95. The Government's case is full of contradictions. If sex education is an unquestionable need of modern man then why is it not necessary in the private schools? It is almost schizophrenic to allow teachers to be exempted from sex education but not children. What if all the teachers in a school refused to give sex education?

96. Professor Unwin in "Sex and Culture" (Oxford, 1934) showed that there was a causal link between cultural achievement and sexual discipline. Every people has the choice between cultural energy and sexual freedom. One cannot have both together for more than one generation.

97. The Act of 24 May 1970 is degrading and should be replaced.

OBSERVATIONS OF MR. AND MRS. HANS PEDERSEN - 9 AUGUST 1973

98. They stated that they were satisfied with the careful way the Commission had dealt with their case so far and did not wish to make additional comments to what they had previously written at the stage of admissibility. They pointed out that they regarded their case as an enclosure to the Viking Kjeldsens' case.

OBSERVATIONS OF MR. AND MRS. BUSK MADSEN - 12 AUGUST 1973

99. They also said that they regarded their case as an enclosure to the Kjeldsens' case. They did not wish to submit full-scale observations on the merits but merely to emphasise some main features of the case:

(a) Compulsory sex education implied discrimination. The basic question is not whether children should be educated in matters of sex but when and by whom. Professor Munk believes that the children should be taught when eight years old and while in school. But there is an opposing school of thought that believes they should be taught when 12 or 13 years old and never collectively. This view is held by respectable psychiatrists.

(b) As the experts differ, the only human right that can be considered here is the right to liberty. Yet the Danish Government wishes to force its point of view on everyone.

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(c) Private schools a solution? Mr. and Mrs. Busk Madsen submit that they have no practical possibility of founding a private school. An attempt was made to found a private school 12 km. from their village but the experiment failed. The parents could not afford it.

(d) A question of religion and outlook on life. Ultimately sex education is a question of outlook on life and religion.

(e) The school boards - a false justification. The school boards must abide by the essential principles laid down by the Government. The "choice" left to the school boards is equivalent to a case where a kidnapper allows his victim the choice of whether the kidnapping is to be by car or motorcycle.

(f) To be the slave of a majority is no better than being the slave of a despot. The English philosopher, Bertrand Russell, is right when he says: "Those who believe that the voice of the people is the voice of God may infer that any unusual opinion or peculiar taste is almost a form of impiety, and is to be viewed as a culpable rebellion against the legitimate authority of the herd. This will only be avoided if liberty is as much valued as democracy, and it is realised that a society in which each is the slave of all is only a little better than one in which each is the slave of a despot. There is equality where all are slaves, as well as where all are free". ("Authority and the Individual" (London 1949) p. 80.)

(g) With the compulsion the Danish State has struck into an unwise and dangerous way. Society ought to allow a person freedom to follow his convictions except where there are very powerful reasons for restraining him. When legislators are wise, they avoid, as far as possible, framing laws in such a way as to compel conscientious men to choose between sin and what is legally a crime (Bertrand Russell, "Authority and the Individual", p. 112).

(h) Sex education in the public schools should be an optional subject. Then it would invade the rights of no-one.

SUMMARY OF THE GOVERNMENT'S WRITTEN OBSERVATIONS PRESENTED AT THE MERITS STAGE (26 NOVEMBER 1973)

A. The wording and the scope of Art. 2 of Protocol No. 1

I. The first sentence of Art. 2

100. The first sentence reads "No person shall be denied the right to education".

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101. Mr. and Mrs. Kjeldsen complain that insofar as they are obliged to keep their daughter away from school in order to protect her mind and feelings, the Government has denied her her right to education.

102. The first sentence of Art. 2 is phrased negatively and the formulation was analysed by the European Court of Human Rights which said "the negative formulation indicates, as is confirmed by the 'preparatory work' that the Contracting Parties do not recognise such a right to education as would require them to establish at their own expense, or to subsidise, education of any particular type or at any particular level" (Belgian Linguistic Case, 23.7.68, Series A6, p. 31). Nevertheless, the Court noted that Art. 2 does speak of a "right" - "a right to education". This is a right for persons subject to the jurisdiction "in principle, to avail themselves of the means of instruction existing at a given time" (ibid. p. 31). The Convention lays down no specific obligations concerning the extent of the means of instruction and the manner of their organisation but the right obviously calls for regulation by the State, regulation which may vary in time and place according to the needs and resources of the community and of individuals. But it goes without saying that such regulation must never injure the substance of the right to education. It follows from what the Court has said that persons subject to the jurisdiction of a Contracting State cannot draw from Art. 2 the right to obtain from the public authorities the creation of a particular kind of educational establishment.

103. The applicants have at no time been denied the right to send their children to a public school or, if they wish, to a private school, or to have them educated at home. They cannot draw from Art. 2 the right to a particular type of education without mention of sex.

II. The second sentence of Art. 2

104. The second sentence of Art. 2 of the Protocol does not guarantee a 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".

Nor does the said clause cover public schools. The two sentences of Art. 2 are quite separate and the applicants are wrong in trying to read them together. Had it been intended to impose positive obligations on the public educational system within the second sentence of Art. 2 then the second sentence would have been worded differently. It now reads "... the

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State shall respect the right of parents to ensure ..."; it would have had to have read "... the State shall ensure such education and teaching ..." or "... the State shall ensure exemption from such education and teaching ...". An examination of the Travaux Préparatoires shows that no such wording was ever proposed.

105. "The State shall respect" is clearly negative. It indicates toleration and passivity. "The right of parents to ensure" - nothing is said about how parents should be allowed to ensure but it has always been the view of the respondent Government that the possibility of establishing and maintaining private schools, with liberal Government grants, would be an important means of implementing the parents' rights. It is clear that the initiative and impetus are left to the parents. Art. 2 was drafted at a time when experiences of Nazism were fresh in people's minds. Freedom to set up private schools was an important safeguard against totalitarian states. But it was not in anyone's mind that Art. 2 should establish a positive right.

106. "Such education and teaching". It can be argued that this phrase with the word "such", indicates that the right of parents is aimed at the public educational system. Time and again the applicants have asserted that the State is obliged to respect all religious or philosophical convictions within the public school system, at least to the extent that it must allow exemption from parts of the curriculum which are contrary to the religious or philosophical convictions of individual parents. But to accept this may lead to a result far from that intended by Art. 2.

107. It will be recalled that during the preparatory work on Art. 2, the Government experts wanted to suppress the reference to philosophical convictions but the Assembly successfully insisted that it be retained. Nevertheless, the notion of "philosophical convictions" is nebulous and even elastic. What about parents who are cranks or faddists? Yet this difficulty is dispelled if freedom of private education is included in Art. 2 as a means of respecting parents' rights. In fact by giving parents the right to send their children to private schools you give them a far more important right than if you merely allow them to exempt their children from parts of the syllabus in the public schools.

108. "Religious and philosophical convictions" and the denominational aspect. The Government has already submitted and trusts that it has now proved, that it has fulfilled its obligations under Art. 2 once it allows parents to send their children to private schools. But just in case the Commission does not accept this submission, the Government will now deal with the situation as it would be if it were found that Art. 2 does impose on Governments an obligation to give parents the

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right to have their children exempted from certain parts of the syllabus in public schools, even when attendance at such schools is not compulsory. In the Government's submission the provision could in that case only imply a right for parents to have their children exempted from instruction in a narrow and precisely defined part of the public school curriculum - that is to say only classes where children are given religious or philosophical instruction of a denominational character - not the case of sex education in Denmark.

109. As to the interpretation of the second sentence of Art. 2 the Government agrees with the applicants that the provision originally approved by the Committee of Ministers, covering as it did only religious education, was criticised by the Consultative Assembly. But the criticism was based on the idea that there should be freedom of private education and that this should not be limited to the religious education of the children nor limited to parents with religious convictions.

110. It is obvious that the State cannot allow parents with special "views of life" to have their children exempted from classes on history, biology and so on. It must be borne in mind that in a free and open society like the Danish there will be a great variety of religious and philosophical convictions. In such circumstances it would be impossible to maintain a system of general public education if all sorts of religious or philosophical convictions had to be taken into account in the public sphere of education.

111. The Government wishes to point out that the Kjeldsens have stated - more than once - that they are opposed to "the Darwinistic concept of life". This means that, if their present complaint is upheld, they may next ask for exemption from biology lessons. As Vattel said, "Any (legal) interpretation which leads to an absurdity should be rejected" ("The Law of Nations or the Principles of Natural Law", 1758, Book II, p. 282).

112. The reservations. At an early stage of the preparatory work on Art. 2, several delegations of the Committee of Experts stated that they would have preferred a text "expressly endorsing the principle of freedom of private teaching". The use of the word "expressly" indicates that the principle was implied.

113. The applicants have pointed out that Sweden and the United Kingdom both recognise private education but also found it necessary to make reservations to Art. 2. The respondent Government considers that the reservations in question must be considered as ex tuto - explanatory statements to the effect that insofar as private schools exist in their countries the two Governments want to make it clear, beyond argument, that certain demands on public education cannot be made.

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III. Art. 2 and other relevant Articles

114. The applicants now submit that the Danish legislation is inconsistent with Arts. 8, 9 and 14 of the Convention.

115. Art. 8 of the Convention. The question of the inter-relationship between Art. 2 of Protocol No. 1 and Art. 8 of the Convention was dealt with at some length by the Commission in its Report on the Belgian Linguistic Case (24.6.65, Series B, Vol. I, pp. 287-298) where the Commission considered that the two Articles governed clearly defined, separate sectors. Art. 8 cannot be interpreted in such a way as to guarantee the right to education nor, of course, to extend Art. 2 of Protocol No. 1

116. The Court of Human Rights in the Belgian Linguistic Case thought that if parents chose to be separated from their children in order to have them educated in French, this might be harsh, but did not involve any breach of Art. 8. Art. 8 in no way guarantees the right to be educated in the language of one's parents by the public authorities or with their aid. The respondent Government submits that this is mutatis mutandis applicable to the situation now before the Commission except that the situation in Denmark is not "harsh". The respondent Government also points out that Art. 8 of the Convention was adopted without much debate, while Art. 2 of Protocol No. 1 was discussed at length. It would be remarkable if the former Article were to be interpreted in such a way as to be an extension of the latter.

117. Art. 9 of the Convention. The applicants have alleged a violation of Art. 9 but they do not elaborate upon the point and the Government fails to see how the 1970 Act could be regarded as in any way infringing the provisions of that Article. The rights of parents with regard to the education of their children is covered by Art. 2 of Protocol No. 1 and the Government is convinced that Art. 9 cannot be interpreted so as to add anything to the rights of parents in this respect.

118. Art. 14 of the Convention. Art. 5 of Protocol No. 1 extends the anti-discrimination provisions of Art. 14 of that Protocol. The Government concedes that Art. 14 does contain, to a certain extent, an addition to the rights and freedoms guaranteed under Art. 2. In this respect, the Government refers to the judgment of the Court in the Belgian Linguistic Case: "... persons subject to the jurisdiction of a Contracting State cannot draw from Art. 2 of the Protocol the right to obtain from the public authorities the creation of a particular kind of educational establishment; nevertheless, a State which had set up such an establishment could not, in laying down entrance requirements, take discriminatory measures within the meaning of Art. 14" (23.7.68, Series A6, p. 33). At the outset the

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Government wishes to stress that primary education in Denmark is open to everybody without any discrimination on any of the grounds mentioned in Art. 14. This is also true of the right of parents to educate their children at home, of access to private schools, and of the availability of public subsidies for private schools. In any case, the applicants are not prevented from sending their children to the public schools. It is their own choice if they withdraw their children from the state system and it is to be noted that not all the applicants in the present cases have, in fact, withdrawn their children. But apart from this, the Court in the Belgian Linguistic Case, pointed out that, in spite of the wide wording of the French text of Art. 14, the Article does not forbid all differences in treatment. It is violated if the distinction in question has no objective and reasonable justification or if there is no reasonable relationship or proportionality between the means employed and the aim sought to be realised. But it is for the national authorities to choose the measures which they consider appropriate in matters governed by the Convention.

119. The respondent Government is convinced that Danish law and practice in this field more than fulfil the requirements of the first sentence of Art. 2 of Protocol No. 1 read in conjunction with Art. 14 of the Convention, as interpreted by the Court. But the crux of the matter is that here again the applicants are attempting to read into other articles of the Convention their very extensive interpretation of the second sentence of Art. 2. Again the Government considers that the applicants' interpretation must be dismissed as being without any foundation.

B. Travaux Préparatoires on Art. 2 of Protocol No. 1

120. The applicants say that their point of view is supported by the Travaux Préparatoires. And they claim that the obligation on a State to respect the right of parents to ensure education and teaching in conformity with their own religious and philosophical convictions cannot be regarded as fulfilled even if a State, like Denmark, fully recognises the principle of liberty to found private schools. They say that the second sentence of Art. 2 is aimed at the public schools and that it is not relevant whether freedom of private schooling exists or not.

121. All this is based on a misunderstanding, or a misreading, of the Travaux Préparatoires.

I. The arguments of the applicants

(1) The financial aspect of private school education

122. The applicants have argued that it does not suffice to grant liberty of private education. It is necessary to have full financial support for private education. This was

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discussed by the Consultative Assembly but it was considered that, although it was a desirable idea, "half a loaf is better than none". In any case, the Danish State does subsidise private schools to the extent of 83% in many of their costs.

(2) The democratic aspect of public school education

123. Danish parents may send their children to the public schools or to private schools, or may educate them at home. Apart from this, within the public school system itself, parents have a decisive influence on how their local schools are run. This has been described above (paras. 36 and 42). As has already been said, the 1970 Act had the backing of all political parties in a democratically elected parliament. Further the applicants have omitted from their references to the Travaux Préparatoires a large number of references to the link between Human Rights on the one hand and Democracy on the other.

(3) Demands on public education

124. The applicants have quoted from speeches by members of the Assembly but they have quoted selectively and if one considers everything that was said - even by the people whom the applicants quote - a different picture emerges. It is perfectly possible to quote the speakers in question as saying that there should be freedom of private education. It is not correct to claim that they were in favour of rights for parents within the public sphere. Mrs. Rehling specifically spoke out against the prohibition of private schools in certain parts of the Federal Republic of Germany. Thus her comment to the effect that totalitarianism might also develop in democracies should be read in this context (Travaux Préparatoires, Collected Texts, Vol. V; p. 1223).

II. The arguments of the Government

125. The Government maintains that, under a public system of education, an important means to respect the right of parents under Art. 2 is by concurrently allowing the establishment of private schools or by allowing private education in the home. Furthermore, the Government maintains that the people who drafted Art. 2 knew this and accepted it. The first mention of education matters in the Travaux Préparatoires deals exclusively with this aspect. In later debates it becomes obvious that the freedom to send a child to a private school was considered to be a typical example of respecting the right of parents as regards the kind of education to be given to their children. If all member States of the Council of Europe had had similar private school systems and similar views regarding Government grants to such schools, the drafting of Art. 2 would have been a relatively easy task. It was not possible to include an express reference to private schools in Art. 2 because this would have raised the question of subsidies.

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But there is no doubt that the framers of Art. 2 realised that the requirements of the Article were fulfilled when parents had the right to have their children educated in private schools or at home. See the address of Mr. Azara (Italy) to the Consultative Assembly on 14 August 1950 in Travaux Préparatoires, Collected Texts, Vol. IV, pp. 836-838, of Mr. Schmal (Netherlands), ibid, pp. 838-839, of Mr. Norton (Ireland) on 16 August 1950, ibid, pp. 846-850, of Mr. MacEntee (Ireland), ibid, pp. 857-860, of Mr. Mitchison (United Kingdom) on 24 August 1950, ibid, pp. 917-919, of Miss Bacon (United Kingdom), ibid, p. 929, of Mr. de Valera (Ireland) on 25 August 1950, ibid, pp. 933-934, of Mr. Schmid (Federal Republic of Germany), ibid, p. 935, of Sir David Maxwell-Fyfe (United Kingdom), ibid, p. 936, of Mr. Stanford (Ireland) on 8 December 1951 in Travaux Préparatoires, Collected Texts, Vol. V, pp. 1221-1222, of Mr. Pernot (France), ibid, pp. 1223-1225, of Mr. Killilea (Ireland), ibid, pp. 1226-1227 and of Mr. Teitgen (France), ibid, pp. 1229-1231. All of these made speeches showing that the essence of Art. 2 was the freedom to found private schools - private schools reflecting the parents' religious or philosophical convictions.

126. The Government thus denies the applicants' claim that the Travaux Préparatoires support their case and also denies that the effect of the works is neutral. The reading of the Travaux Préparatoires clearly shows that the Government is correct.

III. Other aspects of the Travaux Préparatoires

127. The applicants maintain that the obligations of a State within the public educational system should be the same whether private schools exist or not. This view is not supported anywhere in the Travaux Préparatoires. Allowing freedom to private schools is not a necessary but is a sufficient fulfilment of a State's obligations under Art. 2.

C. Legal Literature, Legal Precedent

128. It is interesting to note that the applicants have found no support for their claim in legal literature whereas the two writers - and, as far as the Government knows, the only two writers - who have analysed the interpretation of Art. 2 can be cited in strong support of the Government's view.

129. The Government wishes to refer to Professor Castberg's Commentary on the European Convention for the Protection of Human Rights where he says "It cannot be presumed that Art. 2 provides for more than freedom to organise education which rests upon another basic philosophy than that on which the public schools are resting" ("Den europeiske Konvensjon om menneskerettighetene, Oslo 1971, p. 162). Professor Castberg

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goes on to say that, once private education is provided for, there is no reason why the State should not "favour one particular religious or ethical philosophy in the school". Professor Castberg's view is also fully supported by Professor Partsch in his book "Die Rechte und Freiheiten der europäischen Menschenrechtskonvention" (Berlin 1966). The applicants' reference to Professor Partsch's views imply a distortion (see para. 63 above).

130. On 5 January 1973 the Hamburgisches Oberverwaltungsgericht ruled on the question of obligatory sex education in the public schools in Hamburg. It was argued before the court that obligatory sex education similar to that in Denmark was a violation of Art. 2 of Protocol No. 1 but the court dismissed the case and held for the Education Authority (Aktenzeichen OVG Bf. III 5/72/V VG 165/71).

D. Views on sex education

I. The applicants and the Government

131. The applicants appear to infer from the importance of sex in human relationships that the introduction of sex education in public schools is the reflection of a State philosophy.

132. The Act of 27 May 1970 represents no State philosophy and it is in no way intended to indoctrinate children in any respect. The Government has already explained its reasons for introducing compulsory sex education. The State has no fixed answers to the way in which sex education should be given. The whole idea is that individual pupils should be able to take care of themselves, and at the same time, show consideration for others. This is the exact opposite of a State philosophy. It is a system which to the widest possible extent ensures respect for individual convictions of all sorts.

133. The Government has also said nothing about "objective ethics". What has been said is that teachers must present ethical views in an objective and sober manner. This is the same problem as may arise when teaching politics or biology. The applicants have reproduced a number of quotations in order to demonstrate the intimate relationship which exists between Christianity and sexual morality. The Government would like to point out that opinions on this relationship differ widely. That is why the Danish Guide on sex education stresses the importance of presenting fundamental ethical views in an objective and sober manner. It will be up to the parents to implant in the children their particular moral view.

134. The Government does not intend to comment on the observations of 27 August 1973 by the second legal representative of Mr. and Mrs. Kjeldsen. The

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expressions used and the allegations put forward in these observations are of such a nature that the Government feels confident that the European Commission of Human Rights will appreciate them at their true value. In this connection it should be recalled that offensive or scurrilous expressions may be an abuse of the right of petition, cf. Art. 29 and Art. 27 (2) of the Convention.

135. It should, however, be pointed out that the lawyer is mistaken regarding the exemption of teachers from sex education.

136. Mr. and Mrs. Busk Madsen say that the 1970 Act discriminates against citizens "who have a point of view different from that of the State". But there has been no discrimination (see above). The applicants' quotations from the book "Authority and the Individual" by Bertrand Russell have no bearing on the present problem and, anyway, it should be remembered that Russell was a strong advocate for sex education.

137. Mr. and Mrs. Pedersen have not submitted written observations on the merits but have referred back to their original submissions on admissibility. These submissions are mainly concerned with the manner in which sex education is carried out and on this point the application has been declared inadmissible.

II. The Council of Europe

138. On 18 October 1972 the Consultative Assembly of the Council of Europe adopted Recommendation 675 (1972) on birth control and family planning in Council of Europe member States. The Assembly recommended that the Committee of Ministers invite member Governments of the Council of Europe, inter alia, to ensure that young people are provided with suitable sex education, subject to respect for parents' rights. The Recommendation was based on a Report on birth control, family planning and the problem of abortion in Council of Europe member States (Doc. 3166). This Report took account of the fact that sex education is rather a controversial subject but considered that what could be done on a European scale was the elaboration of a common body of information which would be transmitted to pupils at different levels. The Report noted that sex education had been introduced in Lucerne (Switzerland) and in Germany while its introduction into Belgium was under consideration. The Danish experiment was also noted. The Report considered that in other countries something should be done and that other Governments should study Scandinavian and other experiences. This was part of the wider educational effort to help the younger generation to reach adulthood free from fear.

139. The respondent Government fully subscribes to the above Report. The population of the world is rising at an alarming rate. Responsible Governments and international organisations must persevere to halt the population explosion. The continued existence of mankind and the very future of human rights will depend on the outcome of this work which obviously must include information and education on family planning.

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V. OPINION OF THE COMMISSION

140. The Commission considers that the facts of these cases do not disclose a violation of the Convention.

A. ART. 2 OF PROTOCOL NO. 1

141. The Commission is only concerned in this case with the Danish legislation which provides for integrated sex education, as such. The problem of the manner in which the instruction is given in different schools does not arise here.

142. The relevant Danish legislation is the Act of 27 May 1970, amending the Act relating to public schools (lov nr. 235 af 27. maj 1970 om aendring af lov om folkeskolen), the Executive Order of 8 June 1971 regarding sex education in public schools (bekendtgørelse nr. 274 af 8. juni 1971 om seksualoplysning i folkeskolen) and the Executive Order of 15 June 1972 (bekendtgørelse nr. 313 af 15. juni 1972) which replaced the Executive Order of 1971.

143. With regard to sex education, the "1970 Act" merely provided that road safety instruction, library instruction and sex instruction shall be compulsorily included in the curriculum and administered according to regulations issued by the Minister of Education (Art. 17 (6)).By Art. 21 (6) the Minister of Education is authorised to issue detailed regulations regarding the content and scope of each school subject.

144. Such regulations about sex education are laid down in the Executive Orders of 1971 and 1972 (a translation of the 1972 Order is included above pp. 6-7).

145. The main principles and rules regulating sex education are the same in both the Executive Orders of 1971 and 1972. The Orders distinguish between integrated compulsory sex education, which shall start no later than the third school year, and a general survey of the main topics covered by sex education in the sixth or seventh and ninth school year ("1972 Order", section 1, subsection 3, second sentence). The general survey is given in special lectures and parents may have their children exempted from attending this "special instruction" (section 4). Consequently, the "special sex education" is not at issue in the present case, only the integrated compulsory sex education.

146. The purpose of introducing compulsory sex education was to give all children "such knowledge of sex life as will enable them to take care of themselves and show consideration for others in that respect" (1972 Order, section 1). By integrating sex education with conventional school subjects it was thereby possible to give the necessary instruction about sex in a natural and objective way, taking into consideration the age of the children.

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147. The Commission is of the opinion that it is necessary to make some preliminary remarks on the text of Art. 2.

148. First, the English term "education" corresponds to two terms "instruction" and "éducation" in the French text, but no essential difference appears. Instruction on sex, pregnancy, birth and venereal disease, whether in physical or biological terms, or in terms of human love and responsibilities, is, in the Commission's view, "education" in the sense of Art. 2; and indeed the applications would have been inadmissible under that Article were it not so.

149. Secondly, it is clear from the construction of the Article that the second sentence cannot be interpreted or applied independently of the first. One does not have here two separate, and even competing rights - the right of a child to education, and the right of the parents to realise particular religious or philosophical convictions. The rights are unified in two ways. As the Court has said in the Belgian Linguistic Case (23.7.68, Series A6, p. 32):

> "The right to education ... by its very nature calls for regulation by the State, regulation which may vary in time and place according to the needs and resources of the community and of individuals."

So State intervention in education is both necessary and, as the Court also pointed out, practised in all the Convention countries. Further, the exercise of the parental right, recognised in the second sentence, is to "ensure/assurer" the right of the child to education where there is State intervention, and in particular in State schools. The right of the child to education is in effect the primary right in Art. 2. So the United Nations Declaration of the Rights of the Child, adopted unanimously in 1959, says under Principle 7:

> "The best interests of the child shall be the guiding principle of those responsible for his education and guidance; that responsibility lies in the first place with his parents."

150. The determination of the curriculum in State schools may be wholly or in part the task of the legislature or other State organs. In devising the curriculum the State must have regard to the obligations arising from the "right to education" as laid down in Art. 2 and accordingly to the varying needs of the community and the individuals (Belgian Linguistic Case, 23.7.68, Series A6, p. 32). It is in this sense that the whole social setting of a country becomes very important. So, as in Denmark, it may be thought necessary for the children to receive a more thorough sex education than in another country. That is for the State to decide.

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151. While recognising the functions of the State in the field of education, Art. 2 does restrict the State by the important obligation to respect the rights of parents.

152. The respondent Government has contended that the freedom existing in Denmark to found private schools adequately fulfils its obligations under the Convention. Even from a merely literal interpretation of the Article such a conclusion hardly seems possible. Art. 2 requires the State to respect the rights of parents while exercising its functions in education. That would not be effected if it were sufficient to allow the existence of private schools. Besides, it is clear that the State is not obliged by Art. 2 to finance completely private schooling. The result would be inevitably that the "respect" clause would only grant rights to the wealthier part of the community. The fact that Art. 2 ofProtocol No.1 protects a fundamental right for all parents excludes such an interpretation.

153. This contention of the respondent Government confuses two distinct rights: that of the establishment of and access to private schools or other means of education outside the public school system; and that of securing a form of education, whatever the system, based on the particular religious or philosophical convictions of parents. Art. 13 (3) and (4) of the United Nations Economic Social and Cultural Rights Covenant makes this distinction very clearly. Art. 2 of Protocol No. 1, however, like the UNESCO Convention against Discrimination in Education, Art. 5 (1)(b), does not make the distinction. It follows that both rights are covered in effect. That is to say, Art. 2 not only prohibits the State from preventing parents from arranging the education of their children outside the public schools, but also requires the State actively to respect parental convictions within the public schools. This requirement is then obviously not met simply by the observance by the respondent Government of the prohibition, and by the availability of private schools or alternative means of education other than the public schools.

154. The Commission must therefore consider the requirements of the "respect" clause. It is clear that Art. 2 of Protocol No. 1 poses complicated and many-faceted problems. Its drafting history demonstrates the difficulties which the Article presented to the Governments concerned either because various drafts did not go far enough in protecting the right of parents to decide the education of their children or because of the quite contrary concern, namely, that the drafts went too far in giving the parents the decisive voice in their children's educational development. It was contended that the word "conviction" should be replaced by the more narrow word "creed". It was also proposed that the protection of "philosophical" views would be all-embracing and could disrupt the educational systems of member countries if respect had to be shown to all such views.

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The Committee of Ministers tried to narrow the scope of the Article but was persuaded by the Consultative Assembly to accept the latter's position. Therefore the final draft does not seem to settle a number of doubts about its application. This is shown, inter alia, by the fact that four member countries found it necessary to make reservations to the Article. Those reservations are also useful guides to its interpretation. In this connection it is particularly interesting to note the reservation of the Swedish Government. The Swedish Government has obviously interpreted Art. 2 in a very wide sense which necessitated the said reservation, giving almost complete freedom to the Swedish Government to organise child education regardless of the religious and philosophical convictions of parents. Only in specific cases of children belonging to a religious faith other than the Swedish Church for whom satisfactory alternative religious instruction can be arranged, on the parents' initiative and responsibility, can exemptions be granted (cf. case No. 4733/71). Children of persons holding particularl philosophical convictions cannot be granted exemption.

155. Despite these drafting difficulties, the problem remains of what obligations result from the "respect" clause in a concrete situation. The right of parents, guaranteed by the said clause, is to ensure a certain conformity of their children's education with their own religious and philosophical convictions. It follows, therefore, that the necessary respect is limited to that part of the instruction where such convictions are at stake.

156. The question arises whether sex education belongs in this area. It has been argued that it does not do so because the goal of Danish sex education is to impart objective information on the subject. The primary concern of Art. 2 is to protect the children of certain parents from compulsory religious or philosophical instruction which is not directed at providing information but which is concerned with indoctrinating children in unacceptable beliefs, convictions or ideologies. The Commission is of the opinion that the aim of Danish sex education is far from anything of that sort.

157. On the other hand, the Commission acknowledges that the relationship between man and wife has been and is the subject of different religious convictions and rules. This is particularly so with the whole problem of contraception. Therefore, the Commission accepts that instruction in matters of sex could interfere with people's religious convictions in different ways. This is sufficient to bring the "respect" clause into operation. The Court has held in the Belgian Linguistic Case that linguistic preferences are not within the realm of religious and philosophical convictions. However, attitudes to sexual problems, including contraception, are of a different nature. Values which are basic to the understanding of many religions, as well as philosophical convictions, are involved here.

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158. It is therefore important to consider the way in which the State must respect the right of the parents. Clearly to allow exemption from specific parts of the instruction is such a method. It is the only appropriate method for denominational education in one religion. Compulsory education in one religion without the possibility of exemption would violate Art. 2. But Art. 2 neither expressly nor implicitly grants a general right of exemption from all subjects where religious and philosophical convictions may be involved. Otherwise the State could not guarantee the right to education of all children where it assumes educational functions as is presupposed in this Article.

159. Here it becomes necessary to balance the right of the State to regulate education "according to the needs and resources of the community and of (the) individuals" (Belgian Linguistic Case, 23.7.68, Series A6, p. 32), and its obligations to respect the right of the parents protected in the same Article.

160. Two considerations seem to be of importance in order to achieve this balance. The first is that the State must have good reasons for the introduction of a subject in the public schools which may interfere with the religious or philosophical convictions of some parents. Secondly, and most important, the State must show respect for these convictions in the way in which the subject is taught. Respect must therefore mean tolerance towards the different religious and philosophical convictions which are involved in a particular subject.

161. The Convention representing the public order of Europe, the Commission in its interpretation may have recourse to the long experience of some of the member States. For example, the principle of neutrality and tolerance towards religious convictions has been the outcome of a long history of school-disputes in France. In a formula used in 1883 one finds this principle recognised in French public law today:

> "... le maître devra éviter comme une mauvaise action tout ce qui dans son langage ou dans son attitude blesserait les croyances religieuses des enfants confiés à ses soins, tout ce qui porterait le trouble dans leur esprit, tout ce qui trahirait de sa part envers une opinion quelconque un manque de respect ou de réserve." (Claude-Albert Colliard, Libertés Publiques, 4ème éd., Dalloz 1972, p. 369)

The Commission considers that this approach must prevail, and can prevail, in sex education, a subject in which respect for the convictions of parents and children should be maintained (see also Art. 42 of the Netherlands Primary Education Act 1920).

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162. As regards the situation in Denmark, the Commission considers that there can hardly be any doubt as to the reasonableness of introducing sex education as such in the schools. One may even ask whether Art. 12 of the Convention, protecting the right to marry and to found a family, might call for a reasonable form of sex education in schools in a country with the social development of Denmark.

163. In one country after another, it has become increasingly apparent that knowledge in sexual matters must be imparted to children. Governments have had to act to deal with the alarming situation of the increase in unwanted pregnancies, of venereal disease, etc. The Commission considers that it is reasonable for a legislature to decide that the schools should be the centres for such education in order that this subject is taught as satisfactorily and objectively as possible.

164. The purpose of sex education as conducted in Danish schools is to give the children objective information of biological and other facts of human life. It is true that such teaching will bring up questions of ethics and morals. But from the relevant Danish laws it becomes clear that the purpose of them is not to provide an education aimed at imposing a certain morality (or lack of morality, as it has been said) upon the children. Nothing in the legislation indicates that the education should indoctrinate children in any way, for example, by teaching that extra-marital sex should be considered neither moral nor immoral.

165. The Danish laws on sex education, as accepted by a great majority of the Parliament and the population, are provided to meet the needs of that society which accepts sexual life as a natural part of human life. It is a society which considers that such matters should not be dealt with and taught in an obscure fashion.

166. The main new idea in the said laws is that the sex education should be integrated with other topics and taught in the schools in a natural way, taking into account the age of the children, in the same way as, for example, other questions of biology may be discussed if it is natural to do so during lessons in other traditional subjects.

167. The Commission concludes that the purpose of the Danish laws on sex education is clearly not to impose upon the children a certain ethical or moral view of life.

168. The Commission finds that there is no violation of Art. 2 of Protocol No. 1 in the existence, per se, of the Danish system of sex education. This conclusion was reached by a vote of seven against seven, with the President exercising his casting vote, in accordance with Rule 18 (3) of the Commission's Rules of Procedure, in favour of no violation of the said Article.

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B. ART. 8 OF THE CONVENTION

169. The Commission considers unanimously that there has been no violation of Art. 8 in this case. As the Court has pointed out in the Belgian Linguistic Case, measures in the field of education may come into conflict with this Article "if their aim or result were to disturb private or family life in an unjustifiable manner, inter alia, by separating children from their parents in an arbitrary way" (23.7.68, Series A6, p. 33). If sex education is handled with all due respect for the different convictions of parents, the danger of such a disturbance will be greatly diminished. If in specific cases that disturbance would still result, and it cannot be completely avoided, sex education would not be unjustifiable or arbitrary for the reasons given above. It would be the unavoidable result of the difficult balancing between the interests of the community and the individual in the sphere of education which is implied in the Convention (cf. Belgian Linguistic Case, 23.7.68, Series A6, p. 32).

C. ART. 9 OF THE CONVENTION

170. No member of the Commission finds a violation of Art. 9 of the Convention. Art. 9 was invoked by the Kjeldsens' second lawyer, but no argument has been submitted on the point.

D. ART. 14 OF THE CONVENTION

171. The applicants also invoked Art. 14 of the Convention in conjunction with Art. 2 of Protocol No. 1. However, the Commission considers by a vote of 7 against 4, with three abstentions, that no violation of this Article is disclosed by the facts of the case.

172. Discrimination against the applicants on grounds of religion would have to be either because they take a religious position on sex education or because they, as holders of particular religious beliefs, suffer a disadvantage compared with other religious people. In brief, the applicants maintain that sex education is essentially a religious matter. They say that children of, for example, atheist or Catholic parents can be exempted from school classes in religion because such lessons are either religious or Lutheran, respectively, in spirit. The applicants further contend that sex education is necessarily linked with religious beliefs and that, consequently, to refuse the applicants' children exemption from sex instruction is discriminatory.

173. The Commission disagrees with this approach. Sex education without doubt raises moral and religious issues, but so does the study of history. For example, it would be impossible to teach the history of the Reformation without pupils seeing features inimical to both Catholic and Protestant

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religions, or to give a faithful account of Russian history since 1917 without revealing the oppression inflicted by atheists. But there are critical differences between religious instruction and sex instruction, as defined in the Danish Executive Order (1972). Danish sex education must by its nature rest upon largely undisputed facts. Consequently, the approach to sex instruction can be basically and even exclusively factual, while approaches to denominational religious instruction can vary widely because of the basic assumptions made, and can be controversial. It is for this reason that particular religious beliefs are best respected by allowing exemption from classes on religion.

174. Of course sex instruction might be used in public schools by particular teachers as a vehicle for advancing or for undermining certain religious beliefs or attitudes. But this would be a divergence from the main purpose of the Danish Act and the Executive Order (1972), and issues under Arts. 2 and 14 might then arise. However, the Commission finds that there is no discrimination against the applicants in the Danish Act and Orders.

CONCLUSION

175. An examination of the relevant legislation has disclosed that there has been no violation of the rights and freedoms guaranteed in the Convention and in particular those set out in Arts. 8, 9 and 14 of the Convention and Art. 2 of Protocol No. 1.

Secretary to the Commission — President of the Commission

(A. B. McNULTY) — (J. E. S. FAWCETT)

Separate concurring opinion of Mr. Kellberg

1. Although I agree in principle with the majority opinion it does not to my mind put sufficient stress on the right of the child itself and I should like to develop this in the following way.

2. Art. 2 gives the impression that parents shall have not only a prior right but an unconditional right to decide in educational matters on the basis of their own religious and philosophical convictions and that States have to exempt children, e.g. from compulsory public education, if their parents allege a conviction that such education is contrary to their religious and philosophical beliefs.

It is obvious that such an interpretation cannot be accepted. Apart from the restrictions imposed by Art. 17 of the Convention there must necessarily be certain other factors which have to be considered. First and foremost it is the respect for the right of the child. It is hardly conceivable that the drafters would have intended to give parents something like dictatorial powers over the education of their children. But it is equally inconceivable that society shall not have anything at all to say in educational matters. Everybody not only accepts but will certainly subscribe to the view that a child shall be given the opportunities to develop mentally, physically, morally and socially in conditions of freedom and dignity. It is of course not possible to achieve this without a certain amount of State intervention. If, for example, some parents hold the view that certain groups in society, for racial or other reasons, are inferior to other groups, such views, even if they were based on philosophical convictions, could, of course, not be accepted by the State. But on the basis of which Article of the Convention would the State in such a case have a right to divest parents of their educational right in Art. 2 of Protocol No. 1.

It can furthermore hardly have been intended that a child up to the formal age of majority shall be under the unfettered powers of its parents in these matters. In my opinion one therefore has to pay attention to the interest of the child. In many fields "the best interest of the child" has become a catch word, for example, when a child is adopted, when the custody of a child is decided in divorce proceedings, etc., and it seems necessary to take that notion into account here also.

A child who has reached a certain maturity has often a legal right to be heard and also in some cases to have his or her views respected. In some countries it would for instance not be possible to take away, against his wish, a 12-13 year old child from foster parents with whom he has been living over a number of formative years.

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In the field of convictions - religious or other - it may also be held that a child of a certain age can demand respect for his views. In other words, such a child has become an individual, who has his own rights under the Convention (e.g. under Art. 9). And it would of course be wrong to say that a child, who holds another philosophical conviction than his parents, must abide by their decision in educational matters in this field.

And as courts do in adoption and other similar cases, the Commission must also look to the interest of the child. This element has probably become more recognised as relevant today than it was when the Protocol was drafted.

3. Modern society poses many and grave threats to the integrity of the individual. That applies also and in particular to children. It is impossible to shield a child from what is happening outside the four walls of the family home. To protect a child in today's world does not mean screening him off but making him aware of the often brutal realities of life. A child who has not in this way been equipped with a protective film will later in life be much worse off and lie bare to all kinds of difficulties, perhaps hardships, for want of knowledge.

As the Commission has already said, in one country after the other it has become more and more apparent that children have to be informed about sexual matters. Governments have had to act in order to meet a situation which causes alarm (increase of unwanted pregnancies, of venereal disease, etc.) and few doubt that the school should be the centre for such education in order to make the teaching as objective and satisfactory as possible.

There can in my opinion be no doubt that in a modern society like Denmark the best interest of the child demands that knowledge in sexual matters should be imparted to him.

In my opinion sex education, as such, can hardly be put in question as a violation of the Convention, had it not been for the second sentence of Art. 2 of Protocol No. 1. But again, it is hardly possible to say that the imparting of factual knowledge of how human beings function in sexual matters falls within the concept of religion or philosophy. If it does, it must be on the very fringe and could not be a central theme, since what one wants to give children is facts, not views. Facts can of course also be interpreted differently and be given different moral shades of meaning. But that goes for all facts, not only facts in sexual matters.

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I am aware that factual knowledge can be imparted in a way which causes offence to the ordinary man and this is, of course, particularly true with regard to a subject like sexual knowledge which is still surrounded by taboos, inhibitions and myth-making in some societies or sections of societies. But the question of offensiveness does not fall under the Convention.

4. It is to my mind, furthermore, important to note the very liberal attitude of the Danish Government to private schools. Not only are they allowed to exist but they are given very generous support in the form of State subsidies. It cannot be fair to ask the Government to provide for all possible alternatives. It has given parents with views different from the ones they feel are directly or indirectly imparted to pupils in public schools, the completely free option to have the entire schooling performed in private schools. Obviously, this support cannot be given to such an extent that private schools are to be found in the same number as public schools and nothing in the Convention says that the opportunities should be exactly on the same level. But as long as it cannot be said to be unreasonable to send a child to a private school because of the travelling and expenses involved the Government has, in my mind, done what can be asked of it.

5. To sum up, the present-day situation in a country like Denmark, the best interest of the children in such a society, the situation of private schools in Denmark and a dynamic approach to the Convention leads me to the conclusion that I find for the Government. I feel strongly that it would be a disservice in this case to interpret the Convention in a way which could be harmful, not to parents, because it is not really they who have anything at stake, but to children and if they could be exposed in matters of the kind dealt with in these applications to the overall power of parents. Although this does not mean that my conclusion would necessarily be the same in similar cases from other countries where the conditions may be different.

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Separate opinion of Mr. Opsahl (1)

1. I concur with the Commission's conclusions that there has not been a violation of the Convention in the present cases.

2. In the task of interpreting Art. 2 of Protocol No. 1 and applying it in this case, it is, in my opinion, unnecessary and, indeed, inadvisable or incorrect for the Commission to enter into the balancing of needs. Nor should it consider such controversial distinctions as that between "information" and "indoctrination" or make its findings dependent on the conclusion that the purpose of the legislation in question is not to impose a certain view of life. The emphasis should be placed elsewhere.

3. As I understand Art. 2 and its reference to the right of parents, the purported objectives of State education are not in themselves decisive. Parents may feel that their convictions, within the meaning of Art. 2, could nevertheless be infringed. An assessment of whether or not the necessary respect had been shown must ultimately be left to the parents themselves. Neither the opinion of the State nor that of a majority of parents, nor even that of the Commission can claim precedence here. To decide otherwise would make the position of minorities much too precarious.

4. I agree with the parents that there is no such thing as objectivity in ethics (para. 67 above). Furthermore, contrary to what the Government seem to say (para. 133 above) it is impossible to be objective in the presentation of ethical or religious views.

5. Nevertheless, when, despite a Government's efforts to show respect for parents' convictions in various ways in the State schools, certain parents are still dissatisfied, I think that Art. 2 in its context and in view of its history should be so interpreted that such parents cannot ultimately ask for more than the right to withdraw their children from the public schools. In such a case I agree with the Government that allowing freedom to private schools "is not a necessary but a sufficient fulfilment of a State's obligations under Art. 2" (para. 127 above). Elsewhere I have dealt more fully with a number of the problems concerning this Article (Privacy and Human Rights, ed. by H. A. Robertson, Manchester University Press 1973, pp. 182 ff at pp. 220-243).

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(1) Mr. Opsahl was not present when the final vote on a breach of the Convention was taken by the Commission in the present cases on 16 December 1974. However, as Mr. Opsahl had taken part in all previous deliberations on the cases the Commission took a special decision on 21 March 1975 in accordance with Rule 52 (3) of its Rules of Procedure to permit Mr. Opsahl to enter a separate concurring opinion in the Commission's Report.

6. The observation now made by the Commission that the "respect" clause in Art. 2 must apply to and operate within the public school system seems to be correct (para. 153 above). However, in my opinion, there is an interplay between the different ways of ensuring such respect. In public education the State must have the final word. Withdrawal from the State educational system may therefore become the only way in which parents can exercise their right under Art. 2. If the State finds it difficult or undesirable to accommodate all parents in any other way it fulfils both the letter and the spirit of the Convention and Protocol No. 1 by leaving this possibility open.

7. The final test of respect is therefore whether the obligation to attend the public schools is limited. This test is undoubtedly met by the educational system in Denmark. It allows unconditional freedom to choose private schooling and even gives it substantial financial support which is not required by the Convention and reduces the eight of the argument that only the wealthier section of the community can use this right. In the circumstances of these cases it is not necessary to say whether the ultimate right of withdrawal is always a sufficient or the best way of showing the required "respect".

8. In conclusion, therefore, in the present cases, the interdependence of the respect shown in public education for the views of the majority of parents and the freedom of and support given to private education for any remaining minorities, in my opinion, clearly satisfies Art. 2 of Protocol No. 1.

Dissenting opinion of MM. Sperduti, Ermacora, Welter, Busuttil, Daver, Mangan and Custers

1. We are unable to agree with the conclusion reached by a "technical" majority of the Commission that the introduction of compulsory integrated sex education into the curriculum in the public school system in Denmark does not constitute a violation of the provisions of Art. 2 of Protocol No. 1 of the Convention.

2. The essential facts of the case are not, of course, in dispute and we accordingly adopt the statement of the facts as incorporated in the main body of the Report and in the opinion of the majority:

As noted already in the Report, the main principles and rules regulating sex education in Denmark are laid down in the Executive Orders of 1971 and 1972. We consider it essential to emphasise that the Orders distinguish between integrated compulsory sex education, which starts not later than the third school year, and a general survey of the main topics covered by sex education in the sixth or seventh and in the ninth school years. The general survey is given in special lectures and parents may have their children exempted from this "special instruction". Consequently, the "special sex education" is not at issue in the present case, which only deals with the integrated, compulsory sex education.

3. As we conceive it, the central problem in this case relates to the construction to be put on Art. 2 of Protocol No. 1 which 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."

4. We are in broad agreement with the view of the majority that the second sentence of the Article cannot be interpreted independently of the first. Three rights are here involved: the right of the child to education, the right of the State to regulate such education, and the right of the parents to ensure that such regulation by the State does not encroach on their religious and philosophical convictions. And these three rights are necessarily interlinked. A conflict between the right of the child and that of parents does not seem to be totally excluded, particularly when Art. 2 of Protocol No. 1 is combined with Art. 10 insofar as the latter guarantees the right to receive information or ideas. The problem has been raised before in the Commission, but we do not consider it could arise in the

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present case. The instruction, to which the applicants are opposed, is intended for children in their third, fourth and fifth years of primary schools, when they do not yet have the ability to discern and decide on what matters they should be informed. It must therefore be necessarily left to parents to take this decision. Consequently, in satisfying the child's "right to education", the State must so devise the educational curriculum in the public schools as to ensure that the religious and philosophical convictions of the child's parents are respected. Only in very exceptional cases could the State contravene parents' convictions on the pretext of ensuring the child's right to education.

5. In our view, **the religious** and philosophical **convictions** of the child's parents are not respected simply by pointing to the availability of a private schooling system allowing exemptions consonant with particular parental convictions. On this point we agree with the reasoning set out in the majority opinion, but with the following comments:

The respondent Government's argument in this respect appears to us to be untenable, for, if the argument were correct, Denmark would be perfectly free to reintroduce into the public schools syllabus compulsory classes in Lutheran doctrine. Non-Lutheran children would be obliged **either** to attend such classes or to leave the State education system. In actual fact, however, the Danish public schools no longer teach Lutheran doctrine. Religious knowledge is taught in a way that is "informative only" and, significantly, children do have the right to be exempted. The respondent Government, therefore, in spite of the argument they have employed in the present cases, allow the children of atheist parents the right not to receive religious instruction. They do not say to them that they must attent classes in objective religious instruction or leave the public school system, as it purports to do in the matter of sex education. As the majority point out in their opinion, it is apparent that the respondent Government are here confusing two entirely separate rights: the right of access to private schooling or other means of education outside the State school system, and the right of parents to secure for their children a form of education, whatever the system, based on their religious and philosophical convictions.

In our opinion, Art. 2 of Protocol No. 1 requires the State to respect parental convictions within the larger framework of the whole educational system, public or private. If anything, the second sentence of Art. 2 which refers to "the exercise of any functions which it (the State) assumes in relation to education and to teaching" would seem to be directed specifically at what may happen in the public schools. Indeed, this was the interpretation given to this sentence of Art. 2 by Sweden when faced with a similar problem at the date of the ratification

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of the First Protocol on 26 June 1953. Sweden then entered a reservation to the effect that it "could not grant to parents the right to obtain, by reason of their philosophical convictions, dispensation for their children from the obligation of taking part in certain parts of the education in the public schools".

6. If this is so, the next question is whether sex education is a subject which is capable of offending the religious and philosophical convictions of parents and therefore comes within the purview of Art. 2. The Government in this case have argued that sex education is a question of fact while Art. 2 relates to the teaching of opinions. In this context, however, it is almost impossible to draw a precise dividing line between fact and opinion. Much teaching of fact does assume, or take for granted, a certain ethical standpoint. Instruction concerning the "superiority of the Arian races" in Nazi schools was probably given in such a way that it was supposed to be factual. Teaching about the "life of Christ" in European schools today, even if presented historically, may well be displeasing to the majority of atheists. This latter point is recognised by the respondent Government themselves because, although "religious knowledge" is taught in the Danish schools in an objective way, children <u>are</u> allowed exemption from such instruction.

7. In this sense, it is necessary to take a closer look at the teaching to which the applicants take exception. Virtually everywhere nowadays children learn about biology in school and biology lessons contain instruction in "reproduction", animal and human. It is, however, not to this type of sex education that the applicants object. They object to their children receiving detailed instruction about sex and, in particular, about contraception. The 1970 Act, about which they complain, was not designed simply to introduce sex education into the biology syllabus. It purported to teach children about sex in detail and about contraception so as to enable them to "avoid such insecurity and apprehension as would otherwise cause them problems" (1971 Executive Order) and to "enable them to take care of themselves" (1972 Executive Order).

The Executive Orders prescribe the details of the nature and form of sex education. On the whole, the original Executive Order issued in 1971 gave more "moral" advice than the Executive Order issued in 1972. Nevertheless, this would not seem to make any great difference, because the substance of the provisions of the 1971 Order can now be found in the Guide to sex education in the Folkeskolen. In any case, the new 1972 Order speaks of imparting "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" (Section 1 (1)). This would obviously include a knowledge of contraceptives. It also requires

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schools "as a minimum to provide instruction in ... contraception" (Section 1 (2)) so that "pupils will not later in life land themselves or others in difficulties solely on account of ignorance".

Under the 1972 Executive Order (Section 3 (2)) it shall not be incumbent upon any teacher "to impart any information about coital techniques or to use photographic pictures representing erotic situations". This seems to mean that the teacher may, at his own discretion, tell the children about coital techniques and that he may show erotic pictures. Where this happened, parents and the school boards would be unable to control such teachers because the latter would rely on the provisions of the 1970 Act and the various subsidiary Orders in order to conduct their teaching as they saw fit.

8. In any case, quite apart from any discretion which may be left to the teachers, the whole plan of integrated sex education must include, and expressly does include, instruction about contraception. This, to us, is one of the most significant differences between teaching about "sex" and teaching about the "reproduction of man". Although the Government claim that the instruction contains no moral element, we consider that the teaching does in fact make certain assumptions on moral questions. To talk about "avoiding insecurity and apprehension" is to move into the field of religious and philosophical convictions, the field covered by Art. 2 of Protocol No. 1.

In our view, there is a patent conflict between the Government and the applicants on a question which does involve strong religious principles. The respondent Government assert that sex education only relates to questions of fact and does not involve moral questions. If this assertion were correct, it would be difficult to understand the Government's decision not to impose integrated sex education in private schools or see their reasons for prescribing limits to what should be taught in the public schools. Furthermore, the reasons why the legislation allows parents to obtain an exemption for their children from the courses in special sex education given during the sixth, seventh and ninth school years would be incomprehensible. On the other hand, all these measures are easily understood if it is acknowledged that sex education cannot be seen in the same light as education in the pure sciences such as physics or mathematics.

9. Whether sex education should be regarded as more of a problem for those with "religious" convictions or those with "philosophical" convictions must, of course, depend to some extent on the way the individual applicants present their cases and on their own particular "view of life". The Kjeldsens refer to both religious convictions and philosophical convictions, while the other applicants in the present case seem to treat sex education as a religious problem.

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It may be that all "religious convictions" raise, directly or indirectly, problems of "philosophical convictions". The latter term is more problematical and is the term which is likely to raise difficult issues of interpretation. If a conviction is not "religious" and an applicant claims that it is "philosophical" there may be need for further argument. In the present cases, however, we consider that "religious convictions", whether separately or in conjunction with "philosophical convictions", are involved in the compulsory teaching of a subject which includes contraception and which deals, therefore, with fundamental problems of life and death. However, the majority opinion itself acknowledges that "instruction in matters of sex could interfere with some people's religious convictions in different ways" and it adds that sexual problems, including contraception, touch on "values which are basic to the understanding of many religions..." (para. 157 above). It goes without saying that this is particularly true of the Christian religion to which the applicants belong.

10. The problem then remains as to the manner in which the State "shall respect" the right of parents in this regard. The words "shall respect" do not of course mean that the parents have an absolute and unlimited right to disrupt the school syllabus. The words are a strong form of "shall take account of" (1), and here, as in other parts of the Convention, a balance must be struck between the rights of individual parents and the interests of the community at large. Clearly, there will be cases where the State is entitled to override a particular parent's dislike for or sensitivity about a particular subject and refuse, on a balance of reasonableness and convenience, to treat it as an exemptive subject. History and biology lessons may be offensive to some parents, but it would prima facie be unreasonable to expect the State to grant exemptions from these subjects. On the other hand, we cannot accept the respondent Government's view that the only exemption permissible under Art. 2 is from instruction which is officially designated as "religious" and which has a denominational bias. It is not possible, as a matter of general principle, to say that children shall only be granted exemptions from classes that are officially designated as dealing with "religious studies". If the scope of any exemption only covered "religious lessons" and if the school authorities could decide what to include or not to include in these lessons, it would be only too easy for the authorities to organise completely innocuous classes in religious knowledge and then indoctrinate the children during other lessons.

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(1) An alternative form of words which was proposed by the Committee of Ministers was "shall have regard to"; but this formulation was rejected as "meaningless" by the Committee on Legal and Administrative Questions of the Assembly (Travaux Préparatoires, Collected Texts, Vol. 5, p. 1196).

One could fairly easily envisage cases where "non-religious" classes might impinge on the religious and philosophical convictions of parents. If, in "physical exercises" classes, for instance, children were to be taught, say, yoga meditative exercises, parents might well find such classes offensive and claim exemption on their children's behalf. Again, if Danish children were taught armed combat in "physical training" classes, pacifist parents would almost certainly find this objectionable and demand exemption.

The respondent Government in this case do not, of course, oblige the children of pacifists to attend classes in armed combat. They do not oblige the children of atheists to attend classes in religious instruction, be it even "objective" religious instruction. By the same token, they should not, in our view, oblige the applicants' children to learn about sex and about contraception. Just as the pacifist does not want his child to learn how to fight, so the applicants do not want their children to learn how to "take care of themselves", in another context. Both the pacifist and the applicants have reason to think that if their children are taught in school to do a particular thing - whether it be to carry arms or to have sexual intercourse - they will think that this is morally permissible. Nor is it realistic to suppose that the parents could "un-teach" the children outside school what they have already learned inside.

11. It follows from the above considerations that the Danish legislation on sex education does not respect the right of parents guaranteed in Art. 2 of Protocol No. 1 by the simple fact that nothing in this legislation indicates that the education should indoctrinate children in any way, for example, by teaching that extra marital sex should be considered neither moral nor immoral. If it were otherwise, it would be necessary to conclude that parents should never have the right to have their children exempted from certain courses provided that these courses were presented objectively or, if preferred, impartially. By the same hypothesis, it would be useless to enquire further if a State could invoke more or less strong reasons for the introduction of compulsory instruction in any subject. It is for the State to determine, with discretion, the curriculum in the schools they have set up, but obligatory attendance of courses can only be decreed where there is due respect to parents' religious and philosophical convictions.

12. The reasons which, in the opinion of the majority of the Commission, could be put forward by the Danish Government to justify the introduction of sex education, which is the subject of the present application, hardly appear convincing. In one country after another, the majority state, it has become increasingly apparent that knowledge in sexual matters must be imparted to children. Governments have had to act to deal with the alarming situation of the increase of unwanted pregnancies, of venereal disease, etc.

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We think that these reasons do not justify the introduction of compulsory sex education in classes only attended by nine, ten or eleven year old children. It hardly needs repeating that such reasoning appears even less acceptable when the same instruction is not compulsory in private schools and when, in public schools, it becomes an optional subject for children aged twelve and over, who are nearer the age of puberty.

13. Ultimately the reasoning of the majority opinion appears to us to go against the mandatory provisions of the second sentence of Art. 2 of Protocol No. 1. This provision, unlike others in the Convention such as Arts. 7, 8, 9, 10 and 11, does not allow any derogation from it, whatever the reason. We do not purport to attribute to beliefs which are merely absurd or even dangerous the character of religious or philosophical convictions in the sense of Art. 2 of Protocol No. 1. (One could consider in a different context sects whose followers refuse all medical help for themselves or for their children.) But in this case the applicants base their objections on well recognised religious principles in the member States of the Council of Europe. They do not rely on absurd or dangerous beliefs. The philosophical or religious nature of the convictions which the applicants invoke could not be disputed and in fact is not disputed by the Government. Consequently, the State, whatever the reason, may not impose on the applicants' children an education which does not respect these convictions. Sex education being integrated in Denmark with the general curriculum precludes the State from granting exemptions to children.

14. We consider that sex education, as it was introduced by the 1970 Act, including instruction in contraception, must directly involve the "religious and philosophical convictions" of the parents and that to make this a compulsory and integrated part of the syllabus in the public schools was to fail to "respect the right of parents to ensure" that the education and teaching of their children was in conformity with their "own religious and philosophical convictions". We find, therefore, that the introduction of compulsory sex education into the curriculum in the Danish public schools constitutes a violation of the provisions of the second sentence of Art. 2 of Protocol No. 1 read by itself.

A P P E N D I X I

History of Proceedings

Item	Date	Note
Dates of introduction:		
Application No. 5095/71 (Kjeldsen)	4 April 1971	
Application No. 5920/72 (Busk Madsens)	7 October 1972	
Application No. 5926/72 (Pedersens)	7 October 1972	
Dates of registration:		
Application No. 5095/71	26 July 1971	
Application No. 5920/72	15 November 1972	
Application No. 5926/72	20 November 1972	
Examination by three members of the Commission in accordance with Rule 45 of the Rules of Procedure (old version) of Application No. 5095/71. Decision of group to give notice to the Government of the application, through the Commission's President and the Secretary General of the Council of Europe, and invite its written observations on admissibility, in accordance with Rule 45 (2) of the Rules of Procedure (old version)	7 February 1972	
Notification of Application 5095/71 and invitation to Government for its written submissions	9 February 1972	
Receipt of Government's observations on admissibility of No. 5095/71	29 March 1972	
Receipt of applicants' observations in reply (No. 5095/71)	5 May 1972	

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Item	Date	Note
Examination by group of three members (Rule 45 of the Rules of Procedure (old version) of No. 5095/71)	1 June	1972
Commission's decision to hold hearing on admissibility (No. 5095/71)	2 June	1972 MM. Süsterhenn Sørensen Ermacora Welter Lindal Busuttil Kellberg Daver Opsahl Mangan Custers
Commission's decision to grant legal aid to the Kjeldsens (No. 5095/71)	14 July	1972 MM. Fawcett de Gaay Fortman Süsterhenn Sørensen Welter Lindal Busuttil Kellberg Daver Opsahl Mangan Custers
Receipt of Addendum to Government's written observations on No. 5095/71	15 August	1972
Commission held an oral hearing on the admissibility of No. 5095/71	15 December	1972 MM. Fawcett de Gaay Fortman Sørensen Welter Busuttil Kellberg Daver Opsahl Mangan Custers Applicants represented by: Mr. Jørgen Jacobsen

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Item	Date	Note
		Government represented by: MM. W. McIlquham Schmidt J. Munck-Hansen F. Granerud N. Eilschou Holm T. Rechnagel
Commission's decision on Application No. 5095/71 1) to declare admissible that part of the application relating to Danish legislation; 2) to declare inadmissible that part of the application relating to administrative measures taken by the Danish authorities	16 December 1972	MM. Fawcett de Gaay Fortman Sørensen Welter Busuttil Kellberg Daver Opsahl Mangan Custers
Receipt of the Kjeldsens' observations on the merits presented by Mr. Jørgen Jacobsen (No. 5095/71)	9 May 1973	
Examination by three members of the Commission in accordance with Rule 45 of the Rules of Procedure (old version) of Applications Nos. 5920/72 and 5926/72	24 May 1973	
Commission's decision as a result of Kjeldsens' wish to dismiss first lawyer, to permit Kjeldsens to instruct another lawyer and to continue legal aid for this purpose	28 May 1973	MM. Fawcett Sperduti Triantafyllides Welter Lindal Busuttil Kellberg Daver Opsahl Mangan Custers Nørgaard

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Item	Date	Note
Commission's decision on Nos. 5920/72 and 5926/72 1) insofar as the applications relate to the Danish legislation, to give notice of the applications to the Government and invite them to waive their rights concerning proceedings prior to admissibility so that they may be declared admissible immediately, in view of their similarity to the Kjeldsen case. In the meantime an adjournment was decided.	29 May 1973	MM. Fawcett Sperduti Triantafyllides Welter Lindal Busuttil Kellberg Daver Mangan Custers Nørgaard
2) to declare inadmissible that part of the applications relating to administrative measures taken by the Danish authorities		
Receipt of Kjeldsens' own written observations on the merits (No. 5095/71)	25 June 1973	
Notification received of decision of Danish Government to waive submissions, oral or written, on admissibility in Nos. 5920/72 and 5926/72	27 June 1973	
Commission's decision to declare remaining part of Nos. 5920/72 and 5926/72 admissible and join them with No. 5095/71	19 July 1973	MM. Fawcett Sperduti Ermacora Welter Lindal Busuttil Kellberg Daver Opsahl Mangan Custers Nørgaard

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Item	Date	Note
Notification received from Pedersens that they have no further observations to make on merits of their application (No. 5926/72)	9 August 1973	
Receipt of observations on the merits from the Busk Madsens (No. 5920/72)	12 August 1973	
Receipt of observations on merits from the Kjeldsens' lawyer Mr. Manfred Roeder incorporating those of Mr. Jacobsen submitted 9 May 1973 and those of Kjeldsens themselves submitted 25 June 1973	24 September 1973	
Receipt of submissions on merits from Danish Government in reply to the applicants	26 November 1973	
Examination of the case by one member of the Commission acting as Rapporteur	21 February 1974	
Commission's deliberations	23 May 1974	MM. Fawcett Sperduti Ermacora Welter Kellberg Opsahl Mangan Custers Nørgaard Polak Frowein Jörundsson
Commission's deliberations	17 July 1974	MM. Fawcett Sperduti Ermacora Triantafyllides Welter Busuttil Kellberg Daver Opsahl Mangan Custers Nørgaard Polak Frowein

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Item	Date	Note
Commission's deliberations	1-3 October 1974	MM. Fawcett Sperduti Ermacora Triantafyllides Welter Busuttil Kellberg Daver Opsahl Mangan Custers Nørgaard Polak Jörundsson
Commission's deliberations	16 December 1974	MM. Fawcett Sperduti Ermacora Triantafyllides Welter Busuttil Kellberg Daver Mangan Custers Nørgaard Polak Frowein Jörundsson
Adoption of Report	21 March 1974	MM. Fawcett Sperduti Triantafyllides Welter Busuttil Kellberg Daver Opsahl Mangan Custers Nørgaard Polak Frowein Jörundsson