



COUR EUROPÉENNE DES DROITS DE L'HOMME  
EUROPEAN COURT OF HUMAN RIGHTS

GRAND CHAMBER

**CASE OF FOLGERØ AND OTHERS v. NORWAY**

*(Application no. 15472/02)*

JUDGMENT

STRASBOURG

29 June 2007

*This judgment is final but may be subject to editorial revision.*



**In the case of Folgerø and Others v. Norway,**

The European Court of Human Rights, sitting as a Grand Chamber composed of:

Mr J.-P. COSTA, *President*,  
Mr L. WILDHABER,  
Mr C.L. ROZAKIS,  
Mr B.M. ZUPANČIĆ,  
Mr P. LORENZEN,  
Mrs F. TULKENS,  
Mr C. BÎRSAN,  
Mrs N. VAJIĆ,  
Mrs M. TSATSA-NIKOLOVSKA,  
Mr A. KOVLER,  
Mr V. ZAGREBELSKY,  
Mrs E. STEINER,  
Mr J. BORREGO BORREGO,  
Mr K. HAJIYEV,  
Mr D. SPIELMANN,  
Mr S.E. JEBENS,  
Mrs I. ZIEMELE, *judges*,

and Mr V. BERGER, *jurisconsult*,

Having deliberated in private on 6 December 2006 and on 9 May 2007,  
Delivers the following judgment, which was adopted on the  
last-mentioned date:

## PROCEDURE

1. The case originated in an application (no. 15472/02) against the Kingdom of Norway lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by nine Norwegian nationals: Mrs Ingebjørg Folgerø, Mr Geir Tyberø and their son Gaute A. Tyberø; Mrs Gro Larsen, Mr Arne Nytræ and their two sons Adrian and Nytræ; Mrs Carolyn Midsem and her son, Eivind T. Fosse (“the applicants”), on 15 February 2002. The applicant parents are members of the Norwegian Humanist Association (*Human-Etisk Forbund*). Initially the Association had also joined the application, but it subsequently withdrew.

2. The applicants were represented by Mr L. Stavrum, a lawyer practising in Lillehammer. At the written stage of the proceedings the Norwegian Government (“the Government”) were represented by their Agent, Mrs E. Holmedal, Attorney, Attorney-General's Office (Civil Matters).

3. The present case concerns complaints lodged by non-Christian parents. It relates, firstly, to a complaint under Article 9 of the Convention and Article 2 of Protocol No. 1, about refusals by the domestic authorities to grant their children full exemption from a compulsory subject in

Christianity, Religion and Philosophy (the “KRL-subject” – see paragraph 16 below) taught during the ten-year compulsory schooling in Norway. Secondly, it concerns their complaint about discrimination contrary to Article 14 of the Convention taken in conjunction with the aforementioned provisions and Article 8 of the Convention.

4. The application was first allocated to the Third Section of the Court (Rule 52 § 1 of the Rules of Court), which on 26 October 2004 decided to strike the application out of its list of cases in so far as the Humanist Association was concerned and to declare parts of the application inadmissible. Thereafter the application was allocated to the First Section. On 14 February 2006 it was declared partly admissible by a Chamber of that Section composed of the following judges: Mr C.L. Rozakis, Mr L. Loucaides, Mrs F. Tulkens, Mrs E. Steiner, Mr K. Hajiyevev, Mr D. Spielmann, Mr S.E. Jebens, and also of Mr S. Nielsen, Section Registrar. On 18 May 2006 a Chamber of that Section, composed of Mr C.L. Rozakis, Mrs F. Tulkens, Mr A. Kovler, Mrs E. Steiner, Mr K. Hajiyevev, Mr D. Spielmann, Mr S.E. Jebens, and also of Mr S. Nielsen, Section Registrar, relinquished jurisdiction in favour of the Grand Chamber, none of the parties having objected to relinquishment (Article 30 of the Convention and Rule 72).

5. The composition of the Grand Chamber was determined according to Article 27 §§ 2 and 3 of the Convention and Rule 24 of the Rules of Court. Mr L. Wildhaber, whose term of office expired after presiding over the hearing, continued to participate in the examination of the case (Article 23 § 7).

6. A hearing took place in public in the Human Rights Building, Strasbourg, on 6 December 2006 (Rule 59 § 3).

There appeared before the Court:

(a) *for the Government*

Ms T. STEEN, Attorney, Attorney-General's Office  
(Civil Matters), *Agent,*

Ms E. HOLMEDAL, Attorney, Attorney-General's Office  
(Civil Matters),

Mr G. MANDT, Director, Ministry of Education and Research,

Mr B. GJEFSEN, Senior Adviser, Ministry of Education and  
Research, *Advisers;*

(b) *for the applicants*

Mr L. STAVRUM, *Advokat,* *Counsel,*

Mr K. ROGNLIEN, *Advokat,*

Mrs B. SANDVIG,

Mrs T. NIKOLAISEN, *Advisers.*

The Court heard addresses by Mr Stavrum and Ms Steen.

## THE FACTS

### I. THE CIRCUMSTANCES OF THE CASE

7. The present application was lodged by parents, who are members of the Norwegian Humanist Association (*Human-Etisk Forbund*), and their children, who were primary school pupils at the time of the events complained of in the present case: Mrs Ingebjørg Folgerø (1960), Mr Geir Tyberø (1956) and their son Gaute A. Tyberø (1987); Mrs Gro Larsen (1966), Mr Arne Nytræ (1963) and their two sons Adrian Nytræ (1987) and Colin Nytræ (1990); Mrs Carolyn Midsem (1953) and her son, Eivind T. Fosse (1987). Initially the Association had also joined the application, but it subsequently withdrew.

8. On 26 October 2004 the Court struck the application out in so far as it concerned the Association and declared the application inadmissible on grounds of non-exhaustion in respect of the applicant children (for which reason, the term “applicants” used elsewhere in the present judgment refers to the applicant parents). The Court moreover observed that, while the applicant parents had complained under the Convention in particular about the absence of a right to full exemption from the KRL subject (see paragraph 16 below), they had also challenged before the Court the limited possibilities and the modalities for obtaining partial exemption. However, as can be seen from the Supreme Court's judgment, the applicant parents' lawsuit and appeal to the Supreme Court had been directed against the KRL subject and its implementation generally. The Supreme Court found no ground for determining whether the teaching of the appellants' children had occurred in a manner which violated the relevant human rights treaties. In the light of the foregoing, the Court found that the applicant parents had failed to exhaust domestic remedies as required by Article 35 § 1 of the Convention in respect of their complaint about the possibilities and modalities for obtaining partial exemption from the KRL subject and declared this part of the parents' application inadmissible.

In its subsequent decision on admissibility of 14 February 2006 the Court held that, in its examination of the issue regarding full exemption, the above limitations on the scope of the case that followed from the decision of 26 October 2004 did not prevent it from considering the general aspects of the partial exemption arrangement, notably in the context of the parents' complaint under Article 14 of the Convention.

## A. Factual background to the present case

9. Norway has a State religion and a State Church, of which 86% of the population are members. Article 2 of the Constitution provides:

“Everyone residing in the Kingdom shall enjoy freedom of religion.

The Evangelical Lutheran Religion remains the State's official religion. Residents who subscribe to it are obliged to educate their children likewise.”

10. Instruction in the Christian faith has been part of the Norwegian school curriculum since 1739. From 1889 onwards members of religious communities other than the Church of Norway were entitled to be exempted in whole or in part from the teaching of the Christian faith.

### 1. *The former Compulsory School Act 1969*

11. In connection with the enactment of the former Compulsory School Act 1969 (*lov om grunnskolen*, 13 June 1969 no. 24, hereafter referred to as “the 1969 Act”), Parliament decided that teaching of the Christian faith should be dissociated from the baptismal instruction of the Church and aimed at teaching the main content of the history of the Bible, the principal events in Church history and basic knowledge of the Evangelical Lutheran Faith for children (section 7(4) of the Act).

12. Under the “Christian object clause” (*den kristne formålsparagraf*) in section 1 of the Act:

“Primary school shall, with the understanding and co-operation of the home, assist in giving pupils a Christian and moral education and in developing their abilities, spiritual as well as physical, and giving them good general knowledge so that they can become useful and independent human beings at home and in society.

School shall promote spiritual freedom and tolerance, and place emphasis on creating good conditions for co-operation between teachers and pupils and between the school and the home.”

13. Teachers were required to teach in accordance with the Evangelical Lutheran faith (section 18(3), added in 1971).

14. In accordance with section 12 (6) of the 1969 Act, children of parents who were not members of the Church of Norway were entitled, upon the parents' request, to be exempted in whole or in part from lessons on the Christian faith. Pupils who had been exempted could be offered alternative lessons in philosophy.

### 2. *Reform*

15. Between 1993 and 1997 a process of reform of compulsory primary and secondary school took place. In the spring of 1993 Parliament decided to bring the school starting age forward from the age of seven to six and the next spring it extended compulsory school attendance from nine to ten years. A new curriculum was presented to Parliament. The majority of the Parliamentary Committee for Church Affairs, Education and Research proposed that Christianity, other religions and philosophy be taught

together. It emphasised the importance of ensuring an open and inclusive school environment, irrespective of the pupils' social background, religious creed, nationality, sex, ethnic group or functional ability. School should be a meeting place for all views. Pupils having different religious and philosophical convictions should meet others and gain knowledge about each other's thoughts and traditions. School should not be an arena for preaching or missionary activities. It was noted that since 1969 teaching of the Christian faith had been dissociated from the State Church's baptismal instruction. The subject should give knowledge and insight but should not be a tool for religious preaching. The Committee's majority further considered that guidelines for exemptions should be worked out in order to achieve a uniform practice and that minority groups should be consulted. Exemptions should be limited to parts of the subject, especially material of a confessional character and participation in rituals.

16. Subsequently, a white paper (*St.meld. nr. 14* for 1995-1996) on Christianity, Religion and Philosophy (*kristendomskunnskap med religions- og livssynsorientering*, hereafter referred to as “the KRL subject”) was presented, in which the Ministry of Church Affairs, Education and Research (*Kirke-, utdannings- og forskningsdepartementet*; as from 1 January 2002 *Utdannings- og forskningsdepartementet* – hereafter “the Ministry”) indicated the following guidelines for making exemptions:

“No pupil should feel that being exempted is unpleasant or stigmatising;

No pupil should be pressurised to stand out as a representative of a specific philosophy of life and the school should therefore display great caution in class or at the school in its handling of a request for exemption;

It should not be automatic for certain pupils to be exempted from certain parts of the syllabus;

If the circumstances lend themselves to it and the parents/pupil so wish, the background and reasons for an exemption can be taken up in the lessons.

An exemption does not mean a freedom to be ignorant...”

17. The majority of the above-mentioned parliamentary committee endorsed the curriculum in the main and pointed out that Christianity should form the central part of the subject (*Innst.s.nr 103* for 1995-1996). It further stated:

“The majority would also underline that the teaching should not be value neutral. The aim that the teaching should not be preaching should never be interpreted to mean that it should occur in a religious/ethical vacuum. All teaching and education in our primary schools shall take the school's object clause as a starting point and, within this subject, Christianity, other religions and philosophy shall be presented according to their own special features. The subject should place emphasis on the teaching of Christianity.”

18. A minority of one proposed that, for all primary school pupils, there should be a right to full exemption from the KRL subject and to alternative teaching.

19. In the course of preparing the amendments to the law, the Ministry commissioned Mr E. Møse, then a High Court Judge, to make an assessment of compulsory education in the KRL subject from the angle of Norway's obligations under public international law. In his report of 22 January 1997, he concluded:

“The object clause of the Primary School Act, whether taken alone or together with Article 2 of the Constitution and other special rules on the Church and schools, does not provide a basis for establishing that the teaching of Christianity under the new syllabus will of legal necessity become preaching, educative or influential in favour of the Evangelical Lutheran Religion. The legislature may choose to make provision for education in the form of preaching to pupils who are of this creed, but not to others. That would be inconsistent with our international obligations and Article 110c of the Constitution on the protection of human rights.

What emerges, from a legal point of view, from the somewhat unclear concept of 'confessional basis', is that a natural consequence of the State Church system is that the legislator lets instruction in religion or philosophy include the Evangelical Lutheran thoughts, not other forms of Christianity. The law on the new subject, which includes a part on Christianity, has opted for this. .... The solution has been opted for because the majority of the population in Norway is affiliated to this creed. It is evidently motivated by objective reasons. It cannot be ruled out by human rights treaties, provided that the teaching is otherwise pluralistic, neutral and objective.”

20. As regards the issue of exemption from the KRL subject, Mr Møse stated:

“In the situation as it emerges I find that a general right of exemption would be the safest option. This would mean that international review bodies would not undertake a closer examination of thorny questions that compulsory education raises. However, I cannot say that a partial exemption would violate the conventions, provided that the operation of the system falls within the framework of the relevant treaty obligations. A lot would depend on the further legislative process and the manner of implementation of the subject.”

21. Sections 7 and 13 of the 1969 Act were amended by an Act of 19 June 1997 (no. 83), with effect from 1 July 1997. The new provisions, plus an object clause similar to section 1 of the former 1969 Act, were subsequently included in sections 2-4 and 1-2 respectively of the Education Act 1998 (*Lov om grunnskolen og den videregående opplæring av 17. juli 1998 nr. 61* – hereafter referred to as “the Education Act 1998”), which entered into force on 1 August 1999.

22. Section 1-2(1) provided:

“The object of primary and lower secondary education shall be, in agreement and cooperation with the home, to help give pupils a Christian and moral upbringing, to develop their mental and physical abilities, and to give them good general knowledge so that they may become useful and independent human beings at home and in society.”

23. Section 2-4 read:

“Instruction in Christianity, Religion and Philosophy shall

(i) transmit thorough knowledge of the Bible and Christianity in the form of cultural heritage and the Evangelical Lutheran Faith;

(ii) transmit knowledge of other Christian communities;

(iii) transmit knowledge of other world religions and philosophies, and ethical and philosophical subjects;

(iv) promote understanding and respect for Christian and humanist values; and

(v) promote understanding, respect and the ability to maintain a dialogue between people with different perceptions of beliefs and convictions.

Instruction in Christianity, Religion and Philosophy is an ordinary school subject, which should normally bring together all pupils. The subject shall not be taught in a preaching manner.

A person who teaches Christianity, Religion and Philosophy shall take as a starting point the object clause in section 1-2 and should present Christianity, the different religions and philosophy from the standpoint of their particular characteristics. The same pedagogical principles shall apply to the teaching of the different topics.

A pupil shall, on the submission of a written parental note, be granted exemption from those parts of the teaching in the particular school concerned that they, from the point of view of their own religion or philosophy of life, consider as amounting to the practice of another religion or adherence to another philosophy of life. This may concern, *inter alia*, religious activities within or outside the classroom. In the event of a parental note requesting exemption, the school shall as far as possible seek to find solutions by facilitating differentiated teaching within the school curriculum.”

24. From the *travaux préparatoires* it can be seen that the expression “religious activities” was meant to cover, for example, prayers, psalms, the learning of religious texts by heart and the participation in plays of a religious nature.

25. In accordance with a circular by the Ministry of 10 July 1997 (F-90-97), a parental note to the school requesting exemption should contain reasons setting out what they considered amounted to practice of another religion or adherence to another philosophy of life. The pupil should be granted an exemption after the parents had specified the reasons. If the request was rejected, the parents had a right of appeal to the State Education Office in the county concerned. The appeal was sent via the school, which then had an opportunity to alter its decision.

26. The requirement of giving reasons was further specified in a ministerial circular of 12 January 1998 (F-03-98), according to which no reasons were required for making an exemption from clearly religious activities. Beyond that, with regard to matters falling outside the main rule for making exemptions, stricter requirements applied in respect of reasons.

27. In connection with the preparation of the KRL subject, associations representing minority convictions expressed strong objections, notably that the subject was dominated by Evangelical Lutheran Christianity and contained elements of preaching. The Norwegian Humanist Association commented, *inter alia*, that the subject had a confessional basis

(*konfesjonsforankring*) and that the possibility foreseen for obtaining exemption from only parts of the subject was inadequate. At its national congress in May 1997 the Association decided to invite Parliament to reject the Government's proposal to limit the right of exemption.

28. From the autumn of 1997 the KRL subject was gradually introduced into the primary school curriculum, replacing the subject of Christianity and philosophy of life. During the school year 1999-2000, the subject was introduced at all levels.

### 3. Evaluations of the KRL subject

29. On 18 October 2000 the Ministry issued a press release about the completion of two evaluation reports on the KRL subject, one entitled "Parents', pupils' and teachers' experiences with the KRL subject" (*Foreldres, elevs og læreres erfaringer med KRL-faget*), provided by *Norsk Lærarakademi*, the other entitled "A subject for every taste? An evaluation of the KRL subject" (*Et fag for enhver smak? En evaluering av KRL-faget*) by the *Høgskulen i Volda* and *Diaforsk*. Parliament had requested that a survey of the implementation of the exemption rules be prepared after a three-year period. Both reports concluded that the partial exemption arrangement was not working as intended and should therefore be thoroughly reviewed. The second report listed the following "Main conclusions":

"In this part of our report we have discussed whether there is accordance between KRL's intentions, principles and exemption schemes on the one hand and its practical implementation in schools nationwide on the other hand, and whether parental rights can be said to be ensured when the teaching and exemption scheme are organised the way they are. The perspective of parental rights, which is central to the project's mandate, has made it necessary to focus especially on the experiences various groups of parents have had with the subject and with the exemption scheme.

All things considered it should be said that the great majority of the parents we have been in contact with, who belong to the Church of Norway, are satisfied with the subject or have no strong opinions about it. However we have found powerful resistance to important aspects of the subject among other groups of parents. The lasting antipathy to the subject from parents belonging to religious/faith minorities means that KRL can hardly be said to integrate and include as intended.

The principal and empirical surveys provide grounds for the following main conclusions:

1) There is broad agreement among parents that it is important to have some common teaching in the subject concerning different religions and beliefs, but there is no agreement about

- what the contents and objectives of the common teaching should be;
- in which year the pupils should be taught about other religions than their own.

2) In practice some of the subject's intentions are ensured at all surveyed schools, but all the fundamental intentions are not ensured at any of them. Deficient implementation of central intentions underlying the subject can be explained by

- tensions in the subject description itself and between the various intentions underlying the subject, making it difficult to implement;

- lack of resources and problems with implementation presuppose changes at schools.

3) The current exemption scheme does not work so that parental rights are ensured in practice. This is due to the following reasons among others:-

- the information schools give about the exemption scheme is in many ways not suited to safeguard the possibility of exemption.;

- the information given about KRL classes is of too general a nature for parents to be able to notify their intention regarding an exemption. For example, information about working methods is hardly ever given. Besides, the lesson plans generally come too late for parents to have a practical opportunity of asking for an exemption;

- schools interpret the exemption regulations too restrictively compared with the clarifications given both by the Parliament and the Ministry. For instance, an exemption is often granted only in respect of those activities which are called “clearly religious activities”. Furthermore several schools report attitudes which give the impression that it is practically impossible to be granted an exemption;

- schools offer very little differentiated teaching to pupils who are to be exempted from parts of the subject, and pupils with an exemption mostly sit passively in the classroom;

- in addition, a number of parents from minority language backgrounds do not have the language competence necessary to exercise their rights even though they would like an exemption. In many cases this causes distrust in school - home relations. A considerable number of parents from minority backgrounds say they want full exemption but will not apply because they are afraid of a conflict with the school that may harm their children;

- the integration of themes and subjects helps KRL become invisible in the timetable so that in practice it is very difficult to ask for an exemption.

4) Changes should be made which still ensure some teaching for the whole class, while ensuring parental rights in practice. This only seems possible under certain conditions.

- Arrangements are made in order to facilitate teaching about the different religions and beliefs and promote dialogue and mutual respect in some tuition for the whole class. Efforts should probably be made to have flexible models that can be adjusted to the special conditions prevailing for lower primary, upper primary and lower secondary levels respectively in different parts of the country and for different groups of pupils;

- Considering the problems we can now see at several schools, it should be possible to provide for full exemption. This would be the safest solution in respect of international conventions and probably also the one that in the long run would be best suited to ensuring support and legitimacy for a subject that is focused on religion and belief.

We have established that the variations we have found in teaching in different parts of the country, at some schools and in different classes, give us reason to ask whether KRL was one or more than one new subject.”

## **B. Judicial proceedings brought by some of the applicants**

30. In the meantime, on 14 March 1998 the Norwegian Humanist Association, together with eight sets of parents, who were members of the Association and whose children went to primary school, brought proceedings before Oslo City Court (*byrett*) on account of administrative refusals of the parents' applications for full exemption from the teaching of the KRL subject. They claimed that the refusal of full exemption violated the parents' and the children's rights under Article 9 of the Convention and Article 2 of Protocol No. 1, taken on their own or in conjunction with Article 14 of the Convention. They also invoked, amongst other provisions, Articles 18 and 26 of the 1966 International Covenant on Civil and Political Rights and Article 13 § 3 of the 1966 International Covenant on Economic, Social and Cultural Rights.

31. By a judgment of 16 April 1999, the City Court rejected the State's objection that the Association lacked a legal interest and hence did not have legal standing. However, on the substantive issues arising the City Court found for the State and rejected the claim.

32. The Association and the parents appealed to the Borgarting High Court (*lagmannsrett*), which by a judgment of 6 October 2000 upheld the City Court's judgment.

33. On a further appeal by the applicants, the Supreme Court (*Høyesterett*), by a judgment of 22 August 2001, unanimously dismissed the appeal in as far as it concerned the Association, on the ground that it lacked a legal interest sufficient to have standing in the case. In as far as it concerned the other appellants, it unanimously rejected their appeal and upheld the High Court's judgment.

34. In his reasoning, approved in the main by the other four Justices sitting in the case, the first voting judge, Mr Justice Stang Lund, stated from the outset that “[the] case concerns the validity of the administrative decisions rejecting the parents' applications for full exemption for their children from the primary and secondary school (KRL) subject”. He defined the issue to be determined as being “whether instruction in the [KRL] subject with a limited right to exemption [was] contrary to Norway's international legal obligations to protect, *inter alia*, freedom of religion and belief”.

35. Thereafter, Mr Justice Stang Lund undertook an extensive analysis of the legislative history and the position under international human rights law, notably the relevant provisions and case-law of the European Convention and the 1966 International Covenant on Civil and Political Rights (“the ICCPR”). Dealing in turn with each of the relevant provisions of the Education Act 1998, Mr Justice Stang Lund made the following observations about the Christian object clause in section 1-2(1):

“The object clause applies to all teaching in primary and lower secondary school. The provision is a general one, and its scope may be difficult to determine. It may raise questions relating to the conventions' provisions regarding freedom of religion and parental rights, see Judge Møse, page 35 et seq. of Proposition No. 38 (1996-1997) to the *Odelsting* [the larger division of Parliament. As far as the KRL subject is concerned, the provision must be viewed in conjunction with section 2-4(2), which establishes that this subject is an ordinary school subject for all pupils, and that instruction in the subject shall not involve preaching. The object clause must be interpreted and applied in such a way that it does not conflict with the conventions that have been incorporated pursuant to section 2 (see also section 3) of the Human Rights Act.

As a result of changes and amendments in subject syllabuses and national standard curricula over time, the expression 'Christian and moral upbringing' must be interpreted as meaning that Christian and humanist values are to be viewed in conjunction with each other. Both the Christian and the humanist tradition underscore the importance of truth, human dignity, charity, democracy and human rights. These are values common to almost everyone in Norway, regardless of religion or philosophy of life. The conventions do not require that teaching in schools must be value neutral; see the judgment of the European Court of Human Rights in the case of *Kjeldsen, Busk Madsen and Pedersen v. Denmark* (judgment of 7 December 1976, Series A no. 23, § 53)

The object clause establishes that all school education shall take place in cooperation and agreement with the home. Any effort by primary and lower secondary school teachers to help give pupils a Christian upbringing can only be made with the parents' consent and in cooperation with the home. Interpreted in this way, the provision is not incompatible with Article 9 of the ECHR and Article 18 § 1 to 3 of the ICCPR regarding freedom of thought, conscience and religion or with Article 2 of Protocol No. 1 to the European Convention and Article 18 §.4 of the ICCPR regarding parents. The reference to the object clause in section 2-4(3), which prescribes that teachers of the KRL subject shall take the Christian object clause of the primary and lower secondary school as their point of departure thus has no independent significance for the issue of whether there is a violation of the conventions.”

36. As regards section 2-4(1) to (3) of the 1998 Act, Mr Justice Stang Lund stated:

“The appellants have emphasized that the Act requires the teaching to give pupils a thorough knowledge of the Bible and of Christianity in the form of cultural heritage and the Evangelical Lutheran Faith, while it merely requires knowledge of other world religions, beliefs and ethical and philosophical topics.

I refer to the fact that it may be inferred from the practice of the European Court of Human Rights that the States Parties themselves decide the scope and content of teaching; see *Kjeldsen, Busk Madsen and Pedersen*, cited above, § 53, and *Valsamis v. Greece*, judgment of 18 December 1996, *Reports of Judgments and Decisions* 1996-VI, p. 2312, § 28. Thus, Article 9 of the ECHR and Article 2 of Protocol No. 1 do not preclude compulsory instruction in the content of various religions and beliefs and in the history of religions and ethics, provided that such instruction is given in an objective, critical and pluralistic manner. In this respect, I refer to my earlier review and summary of the decisions and comments of the convention bodies. The compulsory instruction must cover different religions and beliefs. The greater emphasis placed in section 2-4(1) on knowledge of Christianity than on knowledge of other religions and beliefs is, in my opinion, within the limit of the discretion accorded by the conventions to the States Parties. The requirement that compulsory

instruction must be objective, critical and pluralistic cannot be interpreted as meaning that there must be a specific, proportional division of instruction between different religions and different philosophies of life. In the light of the history, culture and traditions of the individual State Party, it must be acceptable for certain religions or beliefs to be more dominant than others.

Indoctrination or other preaching of a specific religion or a specific philosophy of life will be contrary to the European Convention and the ICCPR; see *Kjeldsen, Busk Madsen and Pedersen*, cited above, § 53, and *Valsamis v. Greece*, § 28, and point 6 of the comment of the UN Human Rights Committee of 20 July 1993. Accordingly, section 2-4(2) of the Education Act prescribes that instruction in the KRL subject shall not involve preaching.

The appellants, supported, inter alia, by Judge Møse's report, page 29 of Proposition No. 38 (1996-1997) to the *Odelsting* have argued that instruction that communicates a specific religious view in a way that is liable to influence pupils to adopt a specific faith is also a violation of the convention provisions regarding freedom of religion and parental rights. I agree that such communication might involve a violation. However, the expression 'liable to' may be interpreted in such a way as to give it greater scope than that which it derives from the decisions of the European Court of Human Rights. I shall therefore keep to the criteria that have been developed in the Court's practice. In connection with the introduction of the KRL subject, the *travaux préparatoires* shows that the Ministry and the majority of Parliament were extremely concerned to emphasize that the subject was to be an ordinary school subject for all pupils. This has been expressly stated in the wording of the Act; see section 2-4(2), first sentence. The legislator has also stated that the KRL subject shall be a subject designed to provide knowledge; see, for instance, page 6, second column, and page 10 of Proposition No. 38 (1996-1997) to the *Odelsting*. Section 2-4(3) provides that Christianity, other religions and philosophies of life shall be presented on the basis of their distinctive characteristics. On the other hand, the Parliament's Standing Committee on Education, Research and Church Affairs stated that instruction shall not be value neutral; see page 4 of Recommendation No. 103 (1995-1996) to Parliament. This in itself cannot be contrary to the conventions since, as I have established earlier, neither the ECHR nor the ICCPR is interpreted as meaning that instruction shall be neutral as regards values."

37. As to section 2-4(4) of the Education Act 1998, Mr Justice Stang Lund held that, if interpreted against the background of the relevant provisions of the Convention and the 1966 International Covenant on Civil and Political Rights and section 3 of the Human Rights Act, it must be understood to the effect that pupils had a right to be exempted and that their parents had no obligation to let their children follow lessons on religion and philosophy regarded as preaching or indoctrinating in the sense of those treaties. The children could therefore be absent from such classes. The question as to how large a part of the syllabus would be affected in this way would have to be decided in each concrete case depending on how the teaching was planned and implemented. In the view of Mr Justice Stang Lund, the provision on exemption was not contrary to any requirements pertaining to religious freedom and parental rights. The Convention requirement that the teaching should be objective, critical and pluralistic did not preclude compulsory education in the content of the different religions and philosophies of life or giving a particular religion or philosophy, in view of the Contracting State's history, culture and traditions, a more prominent place than others. As already mentioned, the Education Act 1998

provided that the subject should be an ordinary school subject. According to the preparatory documents, it was to be a knowledge-based subject. The Act required that the teaching be neutral and not preaching. Therefore it did not appear that the provisions in section 2-4 about the contents of the teaching were contrary to the Convention.

38. Mr Justice Stang Lund further considered the parts of the school curriculum (the Ten-year Compulsory Schooling Curriculum, issued by the Ministry in 1999, referred to below as “the Curriculum”) that, in the appellants' submission, gave preference to the Christian faith and influenced pupils to opt for Christianity. In relation to Norway's international obligations, the Curriculum, which had its legal basis in sections 2-6 and 2-8 of the 1998 Act and the relevant regulation of 28 June 1999, had the same legal status as other regulations. However, he observed, what mattered was that pupils gained understanding in the plurality of convictions and thoughts, and that the teaching did not present one faith as being superior to others. It ought to be acceptable, in the light of a Contracting State's history, culture and traditions, that one or more religions or philosophies of life be given a more prominent place than others.

39. As to the appellants' objections to influencing pupils through the use of pictures, songs, drama, music and stories from the Bible and religious texts, Mr Justice Stang Lund found that it ought to be possible to impart neutrally to pupils the traditions and “means of transmitting knowledge” (*måte å formidle på*) of the various religions without running counter to international human rights law. The Curriculum placed emphasis on openness, insight, respect and dialogue and on the promotion of understanding and tolerance in discussion of religious and moral issues and forbade preaching. Within the framework of the Curriculum, the teaching of the KRL subject could be carried out without any conflict with the relevant provisions of international human rights law.

40. As to the appellants' argument that the school manuals, notably volumes 2, 3, 5, and 6 of *Bridges*, amounted to preaching and were capable of influencing the pupils, Mr Justice Stang Lund observed that, while several definitions of problems and formulations used in *Bridges* could be understood as if the Christian faith provided the answer to ethical and moral questions, no further information had been submitted to the Supreme Court as to how the teaching in relation to this material had been planned and implemented.

41. In this context Mr Justice Stang Lund noted that the appellants' lawsuit and appeal to the Supreme Court had been directed against the KRL subject and its implementation generally. The arguments and evidence adduced in relation to each decision to refuse full exemption had been aimed at highlighting how the subject functioned in general. The appellants had not gone closely into the validity of the individual decision. Because of the way the case had been presented, there was no ground for determining whether the teaching of the appellants' children had occurred in a manner which violated the relevant human rights treaties. The case concerned the validity of the decisions refusing full exemption from the KRL subject. The

appellants had not shown it to be probable that the teaching had been planned and carried out in a manner that, in accordance with these conventions, warranted exemption from all teaching of the subject in question.

42. Finally, Mr Justice Stang Lund went on to review the argument of discrimination:

“Pursuant to section 2-4 of the Education Act, parents must send written notification in order for their child to be exempted from parts of the instruction at the individual school. Even if applications for exemption are most likely to concern parts of the KRL subject, a limited right to exemption applies to all subjects and activities. The Act does not stipulate that grounds must be given for the application. Practice as regards requiring grounds has varied to date.

The State has argued that instruction in primary and lower secondary schools is to a considerable extent divided up into topics that cut across subject boundaries. Insofar as parts of the KRL subject are integrated with other subjects, full exemption from instruction in the KRL subject will not be sufficient. It is also the view of the State that the KRL subject covers many topics which do not give grounds for exemption, pursuant either to the conventions or to section 2-4(4). The exemption system is designed and practised in such a way that the content of the instruction is the decisive factor. In the State's view, therefore, the prohibition against discrimination imposed by conventions cannot apply to requirements regarding the provision of grounds for applications for exemption.

The Ministry has explained the requirement as regards grounds and the guidelines for exemption in two circulars. In Circular F-90-97 dated 10 July 1997, page 5, the Ministry stated:

'When parents request an exemption, written notification to this effect shall be sent to the school. The notification must contain grounds supporting what they perceive to be the practice of another religion or adherence to another philosophy of life in the instruction.

If the parents apply for an exemption from parts of the instruction which they perceive to be the practice of another religion or adherence to another philosophy of life, the pupils shall be granted exemption after the parents have explained what it is they consider to have such an effect in the instruction. Parents whose notification to the school regarding exemption is not upheld are entitled to appeal against the municipal administrative decision to the National Education Office in the county concerned. The appeal shall be sent through the school, which is thereby given the opportunity to reverse its administrative decision.'

The Ministry enlarged on the requirement of grounds in Circular F-03-98 dated 12 January 1998, page 3:

'The Ministry's basic rule is that when parents apply for an exemption from activities that are clearly religious, exemption (partial exemption) shall be granted. In such cases, the parents are not required to give any grounds. In the case of applications for exemption from activities that are not clearly religious, more must be required as regards the parents' grounds. Such cases are not covered by the main rule as to what exemptions may be applied for. Moreover, the *travaux préparatoires* make provision for an assessment of whether there are reasonable grounds on which to request an exemption. Reference is made to Recommendation No. 95 (1996-1997) to the *Lagting* [smaller division of Parliament] in which 'The majority is of the opinion that pupils shall be exempted from such parts of the instruction at the individual school as, on the

basis of their own religion or own philosophy of life, it is reasonable to perceive as the practice of another religion or adherence to another philosophy of life.' However, account must be taken of the fact that many parents consider issues relating to faith and philosophies of life to lie within the realm of private life. The right to private life is also protected by international conventions.'

The Ministry then reviews examples of areas from which pupils may be exempted and states on page 4:

'The religious and philosophical convictions of parents shall be respected in the entire Curriculum provided by the school. This means that the rules for exemption apply to all compulsory education. In general, the issue that must be assessed by the school is whether the Curriculum in practice is liable to influence pupils to adopt a specific faith or philosophy of life, or may otherwise be perceived as participation in religious activity or adherence to a philosophy of life.

In specific terms, this may, for instance, have significance with regard to dance classes organised as part of Physical Education; dancing with a partner is incompatible with the faith of some persons, while movement to music is acceptable. In the Arts and Handicraft subject, it will be necessary to exercise caution as regards illustrations of God and the prophets; see the discussion of 'Illustrations - ban on images' in the Guide to the KRL subject (p. 22).'

I will add that in connection with the evaluation of the KRL subject, the Ministry emphasized the importance of changing the content, methodology and organisation of the subject to ensure that as many children and young people as possible could participate in the whole subject. The reason the Ministry nevertheless decided to maintain the limited right of exemption was to be certain that the rights of parents and freedom of religion were safeguarded satisfactorily, and that they were exercised in a way that found understanding; see page 51, first column of Report No. 32 (2000-2001) to Parliament.

I note that the right to exemption from all or parts of the compulsory Curriculum in the KRL subject in primary and lower secondary schools will result in a difference between parents in relation to the school system. Parents and pupils who wish to apply for an exemption must follow the Curriculum closely and apply for an exemption when they consider exemption to be necessary in order to safeguard the rights of the child and their own rights. The school initially decides whether to grant an exemption. The question is whether this difference in treatment is in pursuit of a legitimate aim and whether the aim is proportionate to the means employed.

According to the practice of the European Court of Human Rights, as mentioned earlier, Article 2, second sentence, of Protocol No. 1 has been interpreted as meaning that the convictions must attain a certain level of cogency, seriousness, cohesion and importance, see the Court's judgments in *Campbell and Cosans v. the United Kingdom* (judgment of 25 February 1982, Series A no. 48, p. 16, § 36) and *Valsamis v. Greece* (judgment of 18 December 1996, *Reports of Judgments and Decisions* 1996-VI, p. 2312, § 25). The statements in these judgments support the requirement by the States Parties that parents provide somewhat more detailed grounds when the activity from which they are applying for an exemption does not immediately appear to be practice of a specific religion or adherence to a different philosophy of life.

If an applicant must give detailed information about his or her own religion or philosophy of life, however, this may be a violation of Article 8 of the Convention and Article 17 of the ICCPR regarding the right to respect for private life and possibly also Article 9 of the Convention and Article 18 § 1 of the ICCPR regarding freedom

of religion. I underscore that differential treatment on the ground of religion and political or other opinions is the core of the prohibition against discrimination.

As I have explained, the basic reason for introducing compulsory lessons in the KRL subject was that the Government and a majority of Parliament considered it to be significant for the communication of a common foundation of knowledge, values and culture in primary and lower secondary school. The importance of an open, inclusive school environment was emphasized. Implementation of compulsory primary and lower secondary education must include a right to notify a desire to exercise the right to exemption, and in any event the application must state in general terms the parts of the Curriculum from which exemption is desired. It is clear to me that the common curriculum in the KRL subject and the requirement of a written application to exercise the right to an exemption are means of pursuing legitimate aims, and that it is not a disproportionate measure to require that parents who wish to apply for an exemption from parts of the subject must follow the Curriculum and give notification when they desire an exemption. I will add that this is contingent on the school authorities taking the necessary steps to enable parents to follow the Curriculum. The common, compulsory Curriculum requires that parents be kept well informed about the KRL subject and the programme and methods of the Curriculum at all times, and if appropriate be informed of other activities with a religious content.

The parties have not gone into detail concerning the specific requirements regarding grounds and the grounds that are given in the various applications for exemption from Curriculum in the KRL subject. I shall therefore confine myself to declaring that there is no ground for assuming that a possible violation of the prohibition against discrimination in this case may have the consequence of invalidating the administrative decisions to deny full exemption from lessons in the KRL subject.”

### **C. Petition by the parties to the above proceedings, and their children, to the Court and to the United Nations Human Rights Committee**

43. On 15 February 2002 the applicant parents and children lodged their application under the Convention with the Court.

44. Subsequently, on 25 March 2002, four other sets of parents who had also been parties to the above-mentioned domestic proceedings, lodged together with their respective children a communication (no. 1155/2003) with the United Nations Human Rights Committee under the Protocol to the 1966 International Covenant on Civil and Political Rights.

45. On 3 November 2004 the Committee rejected the respondent State's objection that, as three other sets of parents had lodged a similar complaint before the Court, “the same matter” was already being examined by the latter. The Committee declared the communication admissible in so far as it concerned issues raised under Articles 17, 18 and 26 of the Covenant. As to the merits, the Committee expressed the view that the present framework of the KRL subject, including the regime of exemptions, as it had been implemented in respect of the complainants (“authors”), constituted a violation of Article 18 § 4 of the Covenant. The Committee reasoned as follows:

“14.2 The main issue before the Committee is whether the compulsory instruction of the CKREE<sup>1</sup> subject in Norwegian schools, with only limited possibility of exemption, violates the authors' right to freedom of thought, conscience and religion under article 18 and more specifically the right of parents to secure the religious and moral education of their children in conformity with their own convictions, pursuant to article 18, paragraph 4. The scope of article 18 covers not only protection of traditional religions, but also philosophies of life, (12) such as those held by the authors. Instruction in religion and ethics may in the Committee's view be in compliance with article 18, if carried out under the terms expressed in the Committee's General Comment No. 22 on article 18: '[A]rticle 18.4 permits public school instruction in subjects such as the general history of religions and ethics if it is given in a neutral and objective way', and 'public education that includes instruction in a particular religion or belief is inconsistent with article 18, paragraph 4 unless provision is made for non-discriminatory exemptions or alternatives that would accommodate the wishes of parents or guardians.' The Committee also recalls its Views in *Hartikainen et al. v. Finland*, where it concluded that instruction in a religious context should respect the convictions of parents and guardians who do not believe in any religion. It is within this legal context that the Committee will examine the claim.

14.3 Firstly, the Committee will examine the question of whether or not the instruction of the CKREE subject is imparted in a neutral and objective way. On this issue, the Education Act, section 2-4, stipulates that: 'Teaching on the subject shall not involve preaching. Teachers of Christian Knowledge and Religious and Ethical Education shall take as their point of departure the object clause of the primary and lower secondary school laid down in section 1-2, and present Christianity, other religions and philosophies of life on the basis of their distinctive characteristics. Teaching of the different topics shall be founded on the same educational principles'. In the object clause in question it is prescribed that the object of primary and lower secondary education shall be 'in agreement and cooperation with the home, to help to give pupils a Christian and moral upbringing'. Some of the *travaux préparatoires* of the Act referred to above make it clear that the subject gives priority to tenets of Christianity over other religions and philosophies of life. In that context, the Standing Committee on Education concluded, in its majority, that: the tuition was not neutral in value, and that the main emphasis of the subject was instruction on Christianity. The State party acknowledges that the subject has elements that may be perceived as being of a religious nature, these being the activities exemption from which is granted without the parents having to give reasons. Indeed, at least some of the activities in question involve, on their face, not just education in religious knowledge, but the actual practice of a particular religion (see para 9.18). It also transpires from the research results invoked by the authors, and from their personal experience that the subject has elements that are not perceived by them as being imparted in a neutral and objective way. The Committee concludes that the teaching of CKREE cannot be said to meet the requirement of being delivered in a neutral and objective way, unless the system of exemption in fact leads to a situation where the teaching provided to those children and families opting for such exemption will be neutral and objective.

14.4 The second question to be examined thus is whether the partial exemption arrangements and other avenues provide 'for non-discriminatory exemptions or alternatives that would accommodate the wishes of parents or guardians.' The Committee notes the authors' contention that the partial exemption arrangements do not satisfy their needs, since teaching of the CKREE subject leans too heavily towards religious instruction, and that partial exemption is impossible to implement in practice. Furthermore, the Committee notes that the Norwegian Education Act provides that 'on the basis of written notification from parents, pupils shall be

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<sup>1</sup> The abbreviation used by the Committee for the KRL subject.

exempted from attending those parts of the teaching at the individual school that they, on the basis of their own religion or philosophy of life, perceive as being the practice of another religion or adherence to another philosophy of life'.

14.5 The Committee notes that the existing normative framework related to the teaching of the CKREE subject contains internal tensions or even contradictions. On the one hand, the Constitution and the object clause in the Education Act contain a clear preference for Christianity as compared to the role of other religions and worldviews in the educational system. On the other hand, the specific clause on exemptions in Section 2-4 of the Education Act is formulated in a way that in theory appears to give a full right of exemption from any part of the CKREE subject that individual pupils or parents perceive as being the practice of another religion or adherence to another philosophy of life. If this clause could be implemented in a way that addresses the preference reflected in the Constitution and the object clause of the Education Act, this could arguably be considered as complying with article 18 of the Covenant.

14.6 The Committee considers, however, that even in the abstract, the present system of partial exemption imposes a considerable burden on persons in the position of the authors, insofar as it requires them to acquaint themselves with those aspects of the subject which are clearly of a religious nature, as well as with other aspects, with a view to determining which of the other aspects they may feel a need to seek – and justify – exemption from. Nor would it be implausible to expect that such persons would be deterred from exercising that right, insofar as a regime of partial exemption could create problems for children which are different from those that may be present in a total exemption scheme. Indeed as the experience of the authors demonstrates, the system of exemptions does not currently protect the liberty of parents to ensure that the religious and moral education of their children is in conformity with their own convictions. In this respect, the Committee notes that the CKREE subject combines education on religious knowledge with practising a particular religious belief, e.g. learning by heart of prayers, singing religious hymns or attendance at religious services (para 9.18). While it is true that in these cases parents may claim exemption from these activities by ticking a box on a form, the CKREE scheme does not ensure that education of religious knowledge and religious practice are separated in a way that makes the exemption scheme practicable.

14.7 In the Committee's view, the difficulties encountered by the authors, in particular the fact that Maria Jansen and Pia Suzanne Orning had to recite religious texts in the context of a Christmas celebration although they were enrolled in the exemption scheme, as well as the loyalty conflicts experienced by the children, amply illustrate these difficulties. Furthermore, the requirement to give reasons for exempting children from lessons focusing on imparting religious knowledge and the absence of clear indications as to what kind of reasons would be accepted creates a further obstacle for parents who seek to ensure that their children are not exposed to certain religious ideas. In the Committee's view, the present framework of CKREE, including the current regime of exemptions, as it has been implemented in respect of the authors, constitutes a violation of article 18, paragraph 4, of the Covenant in their respect.”

In view of this finding, the Committee was of the opinion that no additional issue arose under other parts of Article 18 or Articles 17 and 26 of the Covenant. It gave the respondent State 90 days within which to provide “information about the measures taken to give effect to the Committee's Views.

#### **D. Follow-up measures**

46. In light of the United Nations Human Rights Committee's "Views" the Norwegian Government decided to take measures to modify the KRL subject, and notably to propose changes to the Education Act 1998 and the Curriculum. According to Circular F-02-05, this included the following elements:

(i) deleting in section 2-4(3) the reference to the Christian object clause in section 1-2;

(ii) giving the various religions and philosophies of life the same qualitative description in the aims of the subject, while maintaining the current proportions of various religions and philosophies of life in the central teaching material.

(iii) making the provision on partial exemption in current section 2-4(4) the subject of a separate provision, ensuring that the exemption arrangement take sufficient account of the parents' rights and the need to protect minorities; simplifying the provisions on applications for exemption; specifying in the Act the obligation of schools to provide information and circulating information to schools about the practice of the exemption arrangement.

(iv) drawing up a new curriculum making a clear division between those elements that could be viewed as the practice of religions and those elements that could not, while maintaining the distribution between the different parts of the subject.

(v) emphasising the choice of working methods in the introduction to the Curriculum and in the guidelines for the subject, in order to limit the possibility that parts of the teaching could be experienced as the practice of a religion.

Varied and engaging working methods should contribute to the dissemination of all aspects of the subject. It was emphasised that working methods that could be perceived as being close to the practice of a religion required special care on the part of teachers, including the provision of adapted teaching.

(vi) the proposed changes would be implemented from the school year 2005/2006. The introduction of the measures from the autumn of 2005 generated the need for strengthening the skills and competence of the teachers. The Government would commence the work of developing skills and competence as soon as a new curriculum had been finalised.

(vii) a high degree of flexibility should be displayed in relation to parents' wishes for adapted teaching for their child/children. If necessary, the option of full exemption on a temporary basis should be available for those parents who so wished pending implementation of the proposed permanent arrangements.

On the basis of the Government's decision, the Ministry started reviewing the necessary changes. Following proposals by the Ministry on 29 April 2005, endorsed by the Government on the same date (*Ot.prp.nr.91(2004-2005)*), on 17 June 2005 Parliament adopted certain

amendments and additions to the Education Act 1998 which entered into force with immediate effect. As a result, a few adjustments were made to section 2-4(1) (notably, the word “faith” was replaced by “understanding of Christianity”; the requirement of thoroughness was extended to knowledge of other Christian communities) and the reference in section 2-4(3) to the object clause in section 1-2 was deleted (see paragraph 23 above). Moreover, the provisions on partial exemption in section 2-4 (4) were moved to a new and separate section 2-3A, with some clarifying additions and changes. This included, *inter alia*, replacing the expression “religious activities” (in former section 2-4(4)) with the word “activities” and extending the ground for partial exemption to cover also activities that the parents, from the point of view of their own religion or philosophy of life, perceived as being offensive or insulting (in addition to those that they perceived as amounting to the practice of another religion or adherence to another philosophy of life).

## II. RELEVANT DOMESTIC LAW AND PRACTICE

47. The relevant provisions of the Education Act 1998 are cited above.

48. The requirement for parents to give reasons for an application for a partial exemption is described in the citations from Circular F-90-97 and Circular F-03-98, reproduced in the Supreme Court's judgment in paragraph 48 above. The latter circular also contained the following passages, which are of relevance for the present case:

### **“4. Solution: differentiated teaching and local adjustment of the Curriculum**

#### *4.1 Adjusted teaching and local work on the Curriculum as an underlying principle*

Subsection 10 of section 13 of the Compulsory School Act provides that a school that receives notification concerning an exemption shall as far as possible, and especially at the primary school level, seek solutions by providing for '*differentiated teaching within the Curriculum*'.

The differentiated teaching mentioned in the Act is closely related to the adaptation of teaching principle that is generally emphasised in the School Curriculum (*Læreplanverket, L97*) and embodied in section 7 of the Compulsory School Act. In the principles and guidelines, importance is attached to the principles of community and adjustment within the unified school system framework. Formulations there include that the following:-

*Individual adjustment is necessary to ensure that equivalent provision is made for all pupils. For this purpose, all aspects of the school course - syllabus, working methods, organisation and teaching aids - must be adjusted in accordance with the pupils' capabilities.*

It is further stated that this opens up opportunities for different treatment and depth of study of the syllabus, and for variations in kinds of material, difficulty, quantity, speed and progression (see L97/L97S).

....

#### 4.2 Differentiation within the KRL syllabus - differentiation of activities, not of knowledge

According to the statute, a school that receives notification concerning an exemption shall seek solutions in which provision is made for differentiated teaching within the Curriculum. The municipal obligation to provide differentiated teaching applies as extensively as possible and particularly at the primary school stage. The reasons for the statute state that the differentiated teaching shall be provided according to the same curriculum, and is not to be differentiation of knowledge but differentiation of activities. Since there is no exemption from knowledge of the subject, pupils with an exemption shall receive instruction within the framework of the curriculum.

In cases to which partial exemption applies, the alternative is not another subject or another curriculum, but other activities and other ways of working with the KRL syllabus. The school must convey the knowledge in question to the pupils by means of a different methodological approach. Exemption can nevertheless be granted from certain main topics which entail specific activities. An example is the main topic in which pupils are required to *learn* the Ten Commandments *by heart* (*Christian faith and ethics*, 6<sup>th</sup> grade). One cannot, however, be exempted from *knowing about* the Ten Commandments.

The differentiated course of instruction must have regard for the pupils' religious or philosophical background, and help as far as possible to ensure that all pupils have worked with the same areas of knowledge in the grade in question, but using adjusted working methods.

How great the need for differentiation is depends *locally* on

- which religious or philosophical groups the parents belong to, and
- what kinds of activity they request exemption from.

...

### 6. Differentiation in encounters with specific activities

*The Guide to the KRL subject* contains an introduction to ways of working with the subject, and also deals with the questions discussed below. Some of the questions are dealt with more exhaustively here however. See also the concrete examples for each school year given in the guide.

We give examples below of how to work with various activities, and take up other questions that may arise:

#### 6.1 Prayers, creed, and other important religious texts

Some activities - such as learning by heart and reciting creeds, commandments and prayers (LS97 pp. 96 and 101 and L97S pp. 101-09) may be *perceived* by some parents and guardians as the exercise of and/or adherence to a particular religion. When notification is given concerning an exemption from such activities, the school will offer differentiated instruction to enable the pupil to work with that kind of material in a different way.

If the parents find this satisfactory, they can choose to allow their children to be present when prayers or creeds from other religions are recited, provided the children are helped to maintain the necessary distance from the material and from what is

taking place (see in this connection the section above on the roles of participant and spectator). Such activities can also be scheduled for individual working periods and for work in groups in which different approaches to the material are adopted.

### *6.2 Hymn singing*

While arrangements are made for pupils who belong to the Christian tradition to sing hymns and to gain insight through that activity into an important feature of their religious and cultural tradition, necessary regard must be had for pupils who do not belong to that tradition. Hymn singing can also take place outside the Christian knowledge and religious and ethical education periods, for instance in music periods. Hymns can be incorporated into song periods, when they are placed in their musical context and seen as an important part of our sung cultural heritage.

Pupils who have been granted an exemption for hymn singing must be given other ways of working with hymns, as the case may be in separate groups. They can for instance listen to a hymn and be given such assignments as what is the hymn text about? Can you relate the content of the hymn to a particular festival, and if so, why? Why is this hymn important within the Christian tradition? Another possibility would be to use hymns and songs as a theme for project work, involving looking more closely at songs, hymns and music and their functions in the different religions.

See also *the Guide to the KRL subject*, p. 23.

### *6.3 Attendance at rituals/visits to churches or other religious assembly buildings*

Some parents may wish to have their children exempted from entering a church or other centre of divine worship whatever the connection. Others will distinguish between attending a divine service or the like, and being in a church or other religious assembly building on an excursion in a teaching situation. Whatever position the parents may take, cooperation between schools and homes is of major importance whenever such visits are scheduled.

#### *Excursions*

In the fourth grade, pupils are to be made acquainted with the lay-out, fixtures and furnishing of churches and with certain important Christian symbols (programme item: *Christian festivals, religious symbols, the life of the local Christian congregation*). Most pupils will acquire this knowledge by means of pedagogically arranged excursions to the local church. The focus is on the informative and objective aims. Information may for instance be conveyed relating to the church building, church decoration, symbols, and the functions of various objects.

Some parents/guardians may notify exemption for their children from participation in such excursions because a visit to a church is regarded as participation in a religious activity.

For pupils who cannot visit a church, for instance, arrangements must be made for other activities and assignments at school. These should relate to the same area, so that the pupils are given access to parts of the same knowledge as they would have acquired on a church visit. Assignments can, for instance, be given relating to information booklets, if any, publications concerned with local history, or drawings, or pictures and posters showing or concerning the church in question.

See the example on p. 44 of the *Guide to the KRL subject*.

*School services*

The description of the aims of the primary school stage (L97 p. 94 and L97S p. 100) states that pupils *should* visit a church in the local community and *attend a divine service*. It is emphasised that such attendance is part of the school's teaching (not an element of the church's baptismal preparation). Some pupils who belong to traditions other than the Christian tradition may seek exemption from participation for instance in a school service and the related activities. Such pupils must be offered differentiated teaching. If the pupils are present at the service, this can be arranged by, for instance, assigning them to observe the functions of the various stages of the liturgy in relation to the whole, note how the hymns relate to the main theme of the service, or to see whether/how images, colours, texts and music all help to shed light on the theme of the service.

Other parents may notify complete exemption from any attendance at a divine service. Those pupils must be made acquainted with the Christian service by other means than attendance, for instance through classroom teaching with the focus on pictures, music and texts.

What has been said here about church visits can also apply to visits to mosques, synagogues, temples or other houses of religious assembly.

*Illustration and the prohibition of images*

See the more detailed discussion on p. 22 of the *Guide to the KRL subject*.

*Especially challenging stories, parallel figures*

See the more detailed discussion on pp. 30, 32, 50 and 52 of the *Guide to the KRL subject*.

*6.4 Other areas*

The Ministry has received questions concerning other aspects of the course in Christian knowledge and religious and ethical education, including:

*Dramatisations*

Plays, mime and dramatisations can contribute to sympathetic insight into the teaching material and to unity among pupils. Such approaches can at the same time involve the kinds of activity from which some parents/guardians wish to have their children exempted. This could for instance apply to dramatisations which include holy persons, such as Nativity plays.

Some may argue that it is the 'acting part of the work' from which exemption is being sought. That problem can be solved by giving the pupils concerned other important tasks connected with the dramatisation. Sets have to be constructed; lighting and sound need to be planned, set up and tested; programmes need to be prepared. An announcer and narrators are needed. Journalists are needed to interview the active participants in the programme, to describe the activities, and to edit the class newspaper for publication after the performance. These are some of the important assignments that can be carried out by pupils who are not going to be doing jobs relating directly to the dramatisation. These are also means whereby they can be naturally integrated into the class community, while at the same time having the opportunity to adopt a spectator's stance with regard to the material being presented and its mode of presentation.

Other parents may say that their children are not to be included either in the dramatisation or in work connected with it. This must be respected, and other assignments must be prepared for those pupils.

...

### **7. Cooperation between schools and homes - openness and objectivity**

If parents are to feel confident that teaching in the subject does not conflict with their own convictions, close cooperation between schools and homes is necessary.

On the basis of *knowledge* of the religious and philosophical backgrounds of parents, teachers can endeavour to plan their teaching so as to reduce the need for exemption to a minimum. A *teaching plan* for the subject should be drawn up as early as possible. In the plan the school should describe the offers of differentiation that are generally made in connection with different religious and philosophical backgrounds. When the plan is presented to the parents, it gives them the opportunity to consider the need, if any, for exemption from particular activities.

To request partial exemption, parents must send written notification to the school. They must state which activities in the school's teaching they perceive as the exercise of another religion or adherence to another philosophy of life. Parents should then decide whether to opt for *the general offer of differentiation*, if the school has made such an offer, or, in addition, if appropriate, ask for a more *individually adapted offer of differentiation*. By means of the dialogue established in this connection between homes and schools, the specific teaching provisions for the pupils can be determined.

If parents notify the school that they want an exemption from the distinctly religious activities, described in the reasons for the legislation as '*reciting creeds or prayers, learning religious texts by heart, taking part in hymn-singing, and attending rituals or divine services in different congregations*' such notification will apply in general to that type of activity. A new notification for each individual religious activity is thus not necessary.

In the cooperation between schools and homes, school staff must show respect for the fact that pupils have different religious backgrounds. Special attention must be paid to this in contacts with linguistic and cultural minorities.

### **8. Administrative procedures**

Municipal decisions concerning notifications of exemption are individual decisions under the Public Administration Act, and can accordingly be appealed to National Education Offices in accordance with subsection 3 of section 34 of the Compulsory School Act. A municipality can delegate its decision-making authority to the school principal. Matters must be considered in sufficient depth before decisions are taken; see section 17 of the Public Administration Act.

...

### **10. Textbooks as one of several teaching aids in the subject**

The Ministry wishes to emphasise that it is the Curriculum that is binding on the teaching, not the textbooks. The textbooks in the subject are only one of several teaching aids that can be used to achieve the aims of the subject.

The textbooks used in compulsory school must be approved. Even if a textbook has been approved, there is a risk that it contains errors. When teachers have their attention called to possible errors in textbooks, they must look into the matter more closely so that the teaching given is correct.

Although the regulatory special review of books in the subject has been revoked (section 4 of the former textbook regulation), the Ministry notes that the arrangement for the review of textbooks will be continued. The textbooks will be considered by religious and philosophical communities, among others, to ensure that the religions and philosophies of life are presented in accordance with their distinguishing characteristics.”

49. Norway's Ten-year Compulsory Schooling Curriculum, issued by the Ministry in 1999 (referred to as “the Curriculum”) stated:

“The study of the subject is intended to give pupils a thorough insight into Christianity and what the Christian view of life implies, as well as sound knowledge of other world religions and philosophies. Important items in the Curriculum are accordingly the classical Bible stories and other biblical material, the main lines of development and major personalities in the history of Christianity, and the fundamentals of the Christian faith and Christian ethics. The subject also comprises the principal features of other living religions and philosophies of life and some of the major questions raised in philosophy and general ethics concerning the nature of man. The same pedagogical principles should be applied in the teaching of Christianity and in that of the other religions and orientations. The subject must be approached openly and contribute to insight, respect and dialogue across the boundaries between faiths and philosophies, and promote understanding and tolerance in religious and moral questions. The classroom is no place for the preaching of any particular faith. The subject gives knowledge about a faith, not instruction in it. It must also sustain the individual pupil's sense of identity and cultural attachment, while at the same time furthering dialogue within a shared culture.

In order to meet different faiths and views of life with understanding, one needs to be able to place them in a context that is already familiar. The subject thus has various functions in compulsory school: to transmit a tradition, to maintain a sense of identity, and to build bridges which give insight and promote dialogue.

...

**The structure of the subject**

	<b>The primary stage</b>	<b>The intermediate stage</b>	<b>The lower secondary stage</b>
<b>Bible study</b>	Well-known stories from the Bible	Major narratives in the Bible	Biblical genres, the Bible as Scripture, Bible History
<b>History of Christianity</b>	Important single episodes	Early history: trends, persons, cultural expressions	Modern History: trends, person, cultural expressions
<b>Contemporary Christian view of life</b>	Festivals, symbols, Christianity in the community	Christian faith and ethics	Christian Confessions, similarities and differences
<b>Other religions</b>	Other religions and orientations, stories and festivals	Islam, Judaism, Hinduism, Buddhism, Secular orientation	Religious expressions in our time
<b>Ethics/philosophy</b>	Ethical awareness: mine and yours, I and others	Ethical awareness: values and choices	Philosophical interpretations of man: values and norms

Because the subject is new and intended for all pupils, it is essential that parents and pupils of different persuasions are well acquainted with the syllabus and its contents. To reassure parents with regard to the contents of the syllabus, importance has been attached to formulating the syllabus so that parents will find it easy to see what subject matter pupils will be meeting at the various stages.

50. The Curriculum set out the general aims of the subject and listed the objectives and main subject elements for grades 1 to 4, 5 to 7 and 8 to 10.

The general aims of the subject were described as:

“to make pupils thoroughly acquainted with the Bible and with Christianity as cultural heritage and as a living source of faith, morality, and a view of life

- to make pupils familiar with the Christian and humanist values on which school education is based

- to acquaint pupils with other world religions and orientations as living sources of faith, morality, and views of life

- to promote understanding, respect and the capacity for dialogue between people with different views on questions of faith and ethical orientation of life

- to stimulate pupils' personal growth and development”

After setting out the objectives for grades 1 to 4, the Curriculum listed the main subject elements for grades 1 to 4, each of which comprised the following titles: “Biblical narrative”; “Narrative material from church history”; “Christian festivals, religious symbols, and the life of the local Christian community”; “Development of moral awareness: I and others”. As

to “Other religious and ethical orientations” it included “Judaism”, “Islam”, “Hinduism”, “Buddhism”, “Humanism” and “Greek mythology”.

The Curriculum further set out the subject-related objectives for grades 5 to 7, which included this passage:

**“Christian faith and ethics**

Pupils should learn the fundamentals of the Christian faith and Christian ethics in the light of the positions taken in Luther's Small Catechism.

**Other religions**

Pupils should study the main features of and important narratives from Islam, Judaism, Hinduism, and Buddhism.

**Secular orientations**

Pupils should know about secular orientations, the development of the humanist tradition, and the modern humanist view of life.”

The main subject elements for grades 5 to 7 encompassed: “Bible History”, “Early history of Christianity” (“the Middle Ages” in grade 6 and “the Reformation period” in grade 7), “Christian faith and ethics”. As to “Other religions”, the subject included “Islam” for grade 5, “Judaism” for grade 6 and “Hinduism” and “Buddhism” for grade 7. In addition, grades 5 to 7 contained elements for “Development of moral awareness: Values and choices” and “Secular orientations”.

For grade 6 it was stated *inter alia*:

**“Christian faith and ethics**

*Pupils should have the opportunity to*

- learn the Ten Commandments by heart and be acquainted with the ethical ideals underlying the Sermon on the Mount

- learn something of how these fundamental ethical texts have been used in the history of Christianity and how they are applied today”

There was no equivalent in the list of items to “become acquainted with” in regard to “Other religions, Judaism”.

After indicating the subject-related objectives for grades 8 to 10, the Curriculum listed the main subject elements, namely, “The history of the Bible, literary genres in the Bible”; “The modern history of Christianity”; “Various contemporary interpretations of Christianity”; “Religious expressions in our time”; Philosophical interpretations of man, values and norms”.

## COMPLAINTS

51. The applicant parents complained that the refusal of the competent domestic authorities to grant children a full exemption from the KRL subject violated the parents' rights under the Convention. The children's compulsory attendance at religious instruction unjustifiably interfered with their parents' right to freedom of conscience and religion under Article 9 of the Convention. It further violated the parents' right under Article 2 of Protocol No. 1, second sentence, to ensure such education and teaching in conformity with their own religious and philosophical convictions.

52. In addition, the inconveniences resulting from the general aspects of the exercise of the right to partial exemption meant that non-Christian parents were faced with a greater burden than Christian parents, who had no reason for seeking an exemption from the KRL subject, which was designed in accordance with the premises of the majority. In their view this amounted to discrimination. Thus, there had also been a violation of Articles 8 and 9 of the Convention and Article 2 of Protocol No. 1, taken together with Article 14 of the Convention.

## THE LAW

### I. ALLEGED VIOLATION OF ARTICLE 2 OF PROTOCOL No. 1

53. The applicant parents complained both under Article 9 of the Convention and under the second sentence of Article 2 of Protocol No. 1 on account of the refusals by the domestic authorities to grant their children full exemption from the compulsory KRL subject dealing with Christianity, Religion and Philosophy taught during the ten-year compulsory schooling in Norway.

54. The Court, leaving aside the fact that the children's complaints under Article 9 of the Convention were declared inadmissible on 26 October 2004, considers that the parents' complaint falls most suitably to be examined under Article 2 of Protocol No. 1, as the *lex specialis* in the area of education, which reads:

“No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.”

## A. Submissions of the parties

### 1. The applicants

55. The applicants maintained that the KRL subject was neither objective, nor critical nor pluralistic for the purposes of the criteria established by the Court in its interpretation of Article 2 of Protocol No. 1 in its *Kjeldsen, Busk Madsen and Pedersen* judgment. In this context they also referred to the criteria of “neutral and objective” enunciated by the UN Committee in the *Hartikainen v. Finland* case in relation to the corresponding provision in Article 18 § 4 of the International Covenant on Civil and Political Rights. The main intention being to strengthen the pupils' religious identity, the legal framework with a Christian object clause, a curriculum that fully adopted a religious outlook and praised the Christian belief and tradition together with textbooks that contained traditional Christian preaching clearly indicated, in sum, that the Curriculum was not objective.

56. The issue whether the contested Norwegian primary school subject constituted a violation of the relevant human rights standards on freedom of religion, parental rights, freedom of privacy and prohibition of discrimination ought to be seen in the broader context of a society with an extreme Christian predominance. Norway had a State religion, a State Church, with constitutional prerogatives being afforded to the Christian (Evangelical Lutheran) Faith. There was a Christian object clause for State schools and pre-schools. There were State Church priests in the armed forces, prisons, universities and hospitals. There were daily Christian devotions and services in State broadcasting. No less than 86% of the population belonged to the State Church, the Church of Norway.

57. Nevertheless, the right to freedom of religion for non-Christians had been taken care of in different ways, *inter alia*, by an exemption arrangement from the previous Christian Knowledge subject in State schools. This right to a general exemption – which had been enjoyed for more than 150 years – had been repealed when the KRL subject was introduced in 1997. One of the intentions of the Government was to have all pupils together in the classroom when important issues like the combating of prejudice and discrimination, or better understanding of different backgrounds, were taught.

58. The applicants did not disagree with the general intention to promote intercultural dialogue – quite the contrary, they considered that many of the aims expressed by the Government upon establishing the new subject were very good ones and strongly agreed with them. The problem was that the KRL subject simply did not achieve those aims, unlike the “philosophy of life” subject which the applicants favoured.

59. Referring to the mention of religious activities in the rule on partial exemption in section 2-4 of the 1998 Act, the applicants found it hard to understand how this could be reconciled with the requirements that the teaching be “objective and neutral” or even “pluralistic and critical”.

60. The applicants disputed the contention that the KRL subject involved only a few activities that could be perceived as being of a religious nature. The Curriculum, the textbooks that were used in schools and all the information regarding the implementation of the Curriculum indicated that the main object of the subject – to strengthen the pupils' own Christian foundation – was also the main thread in the tuition. The principal intention behind the introduction of the KRL subject had been to secure the religious foundation for the majority of pupils who adhered to Christianity. Otherwise the introductory provision in the 1998 Act would not have been formulated as an obligation for the teacher to provide tuition in accordance with the Christian object clause.

61. The relevant textbooks contained parts that could be conceived as professing Christianity. Although the textbooks had not been formally designated as part of the subject's legal framework, they had acquired official status by having been controlled and authorised by an official State agency, the Norwegian Textbook Agency (*Norsk Læremiddelsentral*).

62. A cornerstone in the partial exemption arrangement was the separation between normative and descriptive knowledge. The pupils could be exempted from taking part in certain activities, but not from knowing the contents of the activities or tuition in question. They could be exempted from reciting from the Bible, singing songs, performing prayers, etc., but not from knowing what was recited, sung, prayed, etc. The whole idea behind the exemption arrangement had been that it was possible to maintain a mental “separation” between knowledge and participation. It presupposed that one could “learn” the text (notably prayers, psalms, Biblical stories and statements of belief) without being subjected mentally to what constituted or might constitute unwanted influence or indoctrination. However, the evaluations made of the KRL subject had shown that that distinction had not been understood in practice, not even by the teachers. The parents in these applications had explained in their written testimonies how this separation did not function with regard to their children. Thus, partial exemption had not been a possible option for them.

63. When parents claimed partial exemption from parts of the tuition other than the religious activities listed on the form, they had to give “brief” reasons for their request in order to enable the schools to consider whether the activity might reasonably be perceived as being the practice of another religion or adherence to another philosophical conviction under section 2-4(4) of the 1998 Act. It was not easy for all parents to have detailed knowledge of and to single out those parts of the tuition they disapproved of and to apply for an exemption, especially when the whole structure of the KRL subject was based on a religious conception which in principle was contrary to the applicants' philosophy of life.

64. For the applicants, it was highly unsatisfactory that their opinions and deeply personal philosophical conviction in this area should be communicated to and examined by school teachers and administrators. Even though the parents might not have had an obligation to state formally their own personal conviction, it was likely that this would have been revealed in

the reasons that they provided in order to obtain a partial exemption. In the applicants' experience, this had been unworthy and undignified.

65. In practice, the partial exemption application procedure would apply to non-Christian parents only. Some of them were immigrants, with little or insufficient knowledge of the Norwegian school system and language and skills in conducting a theoretical dialogue about a religion with which they were not acquainted. For the applicants, however, all being ethnic Norwegians, this was not the case. Even so, despite some having great skills in oral and written communication and some even being well acquainted with the Norwegian school system, it had been hard for them to communicate satisfactorily with the school administration in the exemption application procedure. One difficulty had related to the revelation of what the parents found to be inconsistent with their own philosophy of life. Another problem had been the practical arrangement of the subject. In order to distinguish which parts of the tuition they sought exemption from, the parents had to know exactly what tuition would be offered, at what time, what parts of the textbook would be applied and what activities were to be expected. They would have to follow the Curriculum and the tuition carefully, perhaps by “interviewing” their child on the progress and the contents of the Curriculum step by step. Even if the themes to be taught might seem acceptable in theory, the parents would have to make enquiries into how the teacher presented the material. The evaluation reports showed that it had been very hard to obtain relevant information in good time, which had also been the experience of the applicants.

66. Moreover, as a result of the partial exemption arrangement, the relationship between parent and child suffered. The children's function as “go-between” between the parents and the school and the children's feeling of pressure from being different from others had caused frustration and conflicts of loyalty between the applicants and their children, as had their sense of stigmatisation.

67. The partial exemption arrangement had not functioned for the applicants, who had tried this option but without it offering a practical remedy for them. The arrangement had implied exposure of their own philosophy of life – directly or indirectly – and had forced them to know in detail the elements of another philosophy of life (in order to be able to apply for an exemption). They had been heavily burdened by monitoring the tuition, passing on messages, giving reasons, and by frustration and stigmatisation. The applicants had experienced how their children had suffered under the pressure of being different from other children, acting as “go-betweens” between the home and the school and living with conflicts of loyalty. An exempted pupil might be removed from the classroom and placed in a separate room or might remain in the classroom and be told not to listen or to participate in the activity concerned. The arrangement offered ample potential for conflict and stigmatisation.

68. This being the case, the applicants had had no option other than to apply for full exemption, but had been denied this and had had to comply

with a partial exemption arrangement that did not operate in a manner that respected their rights.

69. In the applicants' view, the best way to combat prejudices and discrimination and to cater for mutual respect and tolerance, as was also an expressed aim of the new subject, was not by forcing people of non-Christian traditions and philosophies to participate in classes that predominantly featured the Christian religion. A better way would have been to maintain the former system with one subject for the majority of pupils coming from Christian families, including information on other philosophies of life, and one non-confessional subject based on common heritage, philosophy and a general history of religions and ethics for the others. Even better would have been to refrain from the Christian superiority integral to the Norwegian school system and to create a common, neutral and objective religion – and philosophy of life subject without any form of religious activity or particular Christian privileges.

## 2. *The Government*

70. The Government stressed that it followed from the Court's *Kjeldsen, Busk Madsen and Pedersen* judgment that no violation of Article 2 of Protocol No. 1 could be established on account of the absence of a right to full exemption from the KRL subject. As acknowledged in that judgment (§ 53), most knowledge-based education might raise issues of conviction. Parents were not even permitted to object to such education because, otherwise, “all institutionalised teaching would run the risk of proving impracticable”. A right to full exemption as that claimed by the applicants here would even more clearly render institutionalised and mandatory teaching impracticable.

71. The Government submitted that, bearing in mind the Court's partial decision on admissibility of 26 October 2004 delimiting the scope of the case, there were two issues arising. The first issue was whether the KRL subject in general involved the imparting of information and knowledge in a manner which objectively might be perceived as indoctrinating, that is, not objective, neutral and pluralistic. Should this be the case, the second issue would be whether a possibility of obtaining a full exemption was the only viable alternative that would accommodate the parents' wishes. The Court's assessment of the KRL subject ought to be objective, rather than relying on the applicants' perceptions, and be based on the presumption that the KRL subject had been taught in conformity with existing regulations and guidelines. The applicants' perceptions of the KRL subject seemed to differ from what could objectively be inferred from the facts.

72. The KRL subject was designed to promote understanding, tolerance and respect among pupils of different backgrounds, and to develop respect and understanding for one's own identity, the national history and values of Norway, and for other religions and philosophies of life. Accordingly, the KRL subject was an important measure for the fulfilment of Norway's obligations under Article 13(1) of the UN Covenant on Economic, Social

and Cultural Rights and Article 29(1) of the UN Convention on the Rights of the Child.

73. Approximately half the Curriculum pertained to the transmission of thorough knowledge of the Bible and Christianity in the form of cultural heritage and the Evangelical Lutheran Faith, and of knowledge of other Christian communities. The other half, approximately, was devoted to the transmission of knowledge of other world religions and philosophies, ethical and philosophical subjects, the promotion of understanding and respect for Christian and humanist values, and of understanding, respect and the ability to maintain a dialogue between people with different perceptions of beliefs and convictions. Therefore, if the applicants – on behalf of their children – were to obtain full exemption, the children would be deprived of knowledge not only of Christianity but also of other religions and other philosophies of life and ethical and philosophical issues. In the view of the Government, the mere fact that the subject provided knowledge of world religions, philosophies of life, and ethical and philosophical topics, and that its purpose was to promote understanding of humanist values and dialogues between people with differing views, should be sufficient to conclude that a clause allowing for full exemption could not be required under the Convention. Such a requirement would prevent all compulsory tuition concerning not only religions, but also other philosophies of life and ethical issues. It would be untenable and run counter to Norway's positive obligations under other international human rights treaties. On this ground alone it should be safe to conclude that parents could not claim a right under the Convention to a full exemption from KRL studies for their children.

74. The Government disagreed with the view implied by the applicants that the alleged lack of proportion could give rise to an issue under Article 9 of the Convention or Article 2 of Protocol No. 1. First of all, teaching pupils knowledge of Christianity could not in itself raise an issue under the Convention, as long as the instruction was carried out in an objective, pluralistic and neutral manner. Secondly, in current Norwegian society there were legitimate reasons for devoting more time to the knowledge of Christianity than to other religions and philosophies of life. These reasons had been set out in the *travaux préparatoires* documents, in the Curriculum and in the subsequent evaluation of the KRL subject.

75. The Christian object clause in section 1-2 of the 1998 Act could not, in the Government's view, give rise to concerns under Article 9 of the Convention or Article 2 of Protocol No. 1. Firstly, the clause provided that it should apply only “in agreement and cooperation with the home”. Thus, any aid by schools in providing a Christian upbringing could only be given with the consent of the parents. Secondly, under section 3 of the Human Rights Act, section 1-2 of the Education Act 1998 ought to be interpreted and applied in accordance with the international human rights treaties that had been incorporated into domestic law through the Human Rights Act. Consequently, the Christian object clause did not authorise preaching or indoctrination of any kind in Norwegian schools.

76. Even if the KRL subject had been intended to be taught in a pluralistic, objective and critical manner, this fact should not exclude activities that could be perceived by parents as being religious, such as excursions to churches, synagogues, mosques or temples or presence at rituals and religious services in various religious communities. Nor would it make it necessary to provide a possibility of obtaining full exemption from the KRL subject.

77. The problem of possible inclusion of activities that might run counter to the philosophical or religious convictions of parents had been given serious and significant attention by the Government in the deliberations on how best to design the KRL subject. Both the Government and the legislature recognised the parents' rights to ensure their children education and teaching in conformity with their own religious and philosophical convictions, but at the same time acknowledged that society had a legitimate interest in and an obligation to enhance mutual respect, understanding and tolerance between pupils with different background as regards religion or philosophy of life. Also, the interests of the pupils themselves in developing and strengthening their own identity and in widening their horizons through gaining knowledge of new religions and philosophies of life were recognized.

78. The Convention safeguarded against indoctrination, not against acquiring knowledge: all information imparted through the school system would – irrespective of subject matter or class level – to some degree contribute to the development of the child and assist the child in making individual decisions. Likewise, even objective, critical and pluralistic information on religion and philosophies of life would provide a backdrop against which the individual child could form his or her own thoughts and identity. The mere fact that such information and knowledge might contribute to the development of the child was not in contravention with the Convention. On the contrary, the Convention should also ensure the child's right to education.

79. The *travaux préparatoires* clearly reflected that the chosen solution regarding exemptions outlined below was the result of a well-balanced compromise between these two interests. The dilemma these competing interests represented was solved through the establishment of three mechanisms that were intended to cater for the rights of parents to ensure their children education and teaching in conformity with their own religious and philosophical convictions: firstly and, perhaps, most importantly, the provision contained in section 2-4 (4) of the 1998 Act, which allowed for exemption from parts of the courses; secondly, differentiated teaching aimed at remedying problems encountered on the basis of parents' religious or philosophical convictions; thirdly, the parents' possibility of obtaining an administrative and/or judicial review if they perceived the education or teaching as not being in conformity with their convictions.

80. The requirement under section 2-4 of the 1998 Act that parents must apply for exemption from the KRL subject did not give rise to an interference with their privacy in the sense of Article 8 of the Convention.

Reasons for the parents' request had to be given only with regard to activities that did not immediately appear to be the practice of a specific religion or adherence to a different philosophy of life. In cases where reasons had to be given, the parents were not required to provide information about their own religious or philosophical convictions.

81. In any event, the conditions imposed by the exemption clause could not be considered disproportionate or unreasonably burdensome, and thus warrant a right of full exemption. As argued above, requests for exemption did not need to be justified by the parents in cases where the activities clearly might be perceived to be of a religious nature. Reasons had to be given only if more extensive exemptions were sought and even then the reasons did not have to be comprehensive.

82. The Government also submitted that the applicants were not obliged to enrol their children in State schools. Individuals, groups of individuals, organisations, congregations or others could, upon application, establish their own schools or provide parental instruction in the home. Therefore, the Norwegian Humanist Association, or parents who did not want their children to participate in the KRL subject despite the partial exemption clause, were at liberty to avoid the problem by establishing alternative schools, either on their own or in cooperation with others of the same conviction. This was a realistic and viable alternative as regards economic risk as well, as more than 85% of all expenditure connected to establishing and running private schools was publicly funded.

83. The applicants' affirmation that no Christian parents had applied for exemption or forwarded complaints with regard to the KRL subject was unfounded. Although the Government kept no statistics on the cultural background of parents who sought exemption from the KRL subject, it emerged that several Christian communities had established private schools on account of their dissatisfaction with the tuition of Christianity provided in state schools. Several of these schools had been established after the KRL subject had been introduced in 1997. There were now 82 registered private schools with a philosophy-of-life background. Since 2001, 31 of all 36 applications concerned the establishment of new Christian private schools. It would therefore be safe to assume that certain parents with a Christian philosophy of life had been dissatisfied with certain elements of the KRL subject and had applied for exemptions.

## **B. Assessment by the Court**

### *1. General principles*

84. As to the general interpretation of Article 2 of Protocol No. 1, the Court has in its case-law (see, in particular, *Kjeldsen, Busk Madsen and Pedersen v. Denmark*, judgment of 7 December 1976, Series A no. 23, pp. 24-28, §§ 50 to 54; *Campbell and Cosans v. the United Kingdom*, judgment of 25 February 1982, Series A no. 48, pp. 16-18, §§ 36-37; and *Valsamis v. Greece*, judgment of 18 December 1996, *Reports of Judgments and*

*Decisions* 1996-VI, pp. 2323-24, §§ 25-28) enounced the following major principles:

(a) The two sentences of Article 2 of Protocol No. 1 must be interpreted not only in the light of each other but also, in particular, of Articles 8, 9 and 10 of the Convention (see *Kjeldsen, Busk Madsen and Pedersen*, cited above, p. 26, § 52).

(b) It is on to the fundamental right to education that is grafted the right of parents to respect for their religious and philosophical convictions, and the first sentence does not distinguish, any more than the second, between State and private teaching. The second sentence of Article 2 of Protocol No. 1 aims in short at safeguarding the possibility of pluralism in education which possibility is essential for the preservation of the “democratic society” as conceived by the Convention. In view of the power of the modern State, it is above all through State teaching that this aim must be realised (see *Kjeldsen, Busk Madsen and Pedersen*, cited above, pp. 24-25, § 50).

(c) Article 2 of Protocol No. 1 does not permit a distinction to be drawn between religious instruction and other subjects. It enjoins the State to respect parents' convictions, be they religious or philosophical, throughout the entire State education programme (see *Kjeldsen, Busk Madsen and Pedersen*, cited above, p. 25, §51). That duty is broad in its extent as it applies not only to the content of education and the manner of its provision but also to the performance of all the “functions” assumed by the State. The verb “respect” means more than “acknowledge” or “take into account”. In addition to a primarily negative undertaking, it implies some positive obligation on the part of the State. The term “conviction”, taken on its own, is not synonymous with the words “opinions” and “ideas”. It denotes views that attain a certain level of cogency, seriousness, cohesion and importance (see *Valsamis*, cited above, pp. 2323-24, §§ 25 and 27, and *Campbell and Cosans*, cited above, pp. 16-17, §§ 36-37).

(d) Article 2 of Protocol No. 1 constitutes a whole that is dominated by its first sentence. By binding themselves not to “deny the right to education”, the Contracting States guarantee to anyone within their jurisdiction a right of access to educational institutions existing at a given time and the possibility of drawing, by official recognition of the studies which he has completed, profit from the education received (see *Kjeldsen, Busk Madsen and Pedersen*, cited above, pp. 25-26, § 52, and *Belgian linguistic case* (merits), judgment of 23 July 1968, Series A no. 6, pp. 31-32, § 4).

(e) It is in the discharge of a natural duty towards their children - parents being primarily responsible for the “education and teaching” of their children - that parents may require the State to respect their religious and philosophical convictions. Their right thus corresponds to a responsibility closely linked to the enjoyment and the exercise of the right to education (*ibid.*).

(f) Although individual interests must on occasion be subordinated to those of a group, democracy does not simply mean that the views of a

majority must always prevail: a balance must be achieved which ensures the fair and proper treatment of minorities and avoids any abuse of a dominant position (see *Valsamis*, cited above, p. 2324, § 27).

(g) However, the setting and planning of the curriculum fall in principle within the competence of the Contracting States. This mainly involves questions of expediency on which it is not for the Court to rule and whose solution may legitimately vary according to the country and the era (see *Valsamis*, cited above, p. 2324, § 28). In particular, the second sentence of Article 2 of Protocol No. 1 does not prevent States from imparting through teaching or education information or knowledge of a directly or indirectly religious or philosophical kind. It does not even permit parents to object to the integration of such teaching or education in the school curriculum, for otherwise all institutionalised teaching would run the risk of proving impracticable (see *Kjeldsen, Busk Madsen and Pedersen*, cited above, p. 26, § 53).

(h) The second sentence of Article 2 of Protocol No. 1 implies on the other hand that the State, in fulfilling the functions assumed by it in regard to education and teaching, must take care that information or knowledge included in the curriculum is conveyed in an objective, critical and pluralistic manner. The State is forbidden to pursue an aim of indoctrination that might be considered as not respecting parents' religious and philosophical convictions. That is the limit that must not be exceeded (*ibid.*).

(i) In order to examine the disputed legislation under Article 2 of Protocol No. 1, interpreted as above, one must, while avoiding any evaluation of the legislation's expediency, have regard to the material situation that it sought and still seeks to meet. Certainly, abuses can occur as to the manner in which the provisions in force are applied by a given school or teacher and the competent authorities have a duty to take the utmost care to see to it that parents' religious and philosophical convictions are not disregarded at this level by carelessness, lack of judgment or misplaced proselytism (see *Kjeldsen, Busk Madsen and Pedersen*, cited above, pp. 27-28, § 54).

## *2. Application of those principles to the present case*

85. In applying the above principles to the case under consideration the Court will have regard to the decisions on admissibility of 26 October 2004 and 14 February 2006, defining the scope of the case to be examined on the merits (see paragraph 8 above). The question to be determined is whether the respondent State, in fulfilling its functions in respect of education and teaching, had taken care that information or knowledge included in the Curriculum for the KRL subject be conveyed in an objective, critical and pluralistic manner or whether it had pursued an aim of indoctrination not respecting the applicant parents' religious and philosophical convictions and thereby had transgressed the limit implied by Article 2 of Protocol No. 1. In examining this question, the Court will consider, in particular, the

legislative framework of the KRL subject as it applied generally at the time when the case stood before the national courts.

86. From the outset it should be observed that Article 2 of the Constitution, which in its first paragraph guarantees freedom of religion, provides in its second paragraph that the Evangelical Lutheran Religion is to be the State's official religion and confers on its adherents an obligation to educate their children likewise (see paragraph 9 above).

87. What is central to the present case is the legal framework as laid down, in particular, in sections 1-2(1) and 2-4 of the Education Act 1998, Circulars F-90-97 and F-03-98 issued by the Ministry and the relevant parts of the Ten-Year Compulsory Schooling Curriculum. Regard should also be had to the legislative intentions behind the KRL subject as expressed during the preparatory works. In this connection it should be noted that the issue whether the teaching of the applicants' children had occurred in a manner contrary to the Convention falls outside the ambit of the cases as delimited by the decision on admissibility of 26 October 2004. This also applies to their argument that the school manuals had amounted to preaching and been capable of influencing the pupils.

88. Turning to the drafting history first, it should be reiterated that a prevailing intention behind the introduction of the KRL subject was that, by teaching Christianity, other religions and philosophies together, it would be possible to ensure an open and inclusive school environment, irrespective of the pupil's social background, religious creed, nationality or ethnic group and so on. The intention was that the school should not be an arena for preaching or missionary activities but a meeting place for different religious and philosophical convictions where pupils could gain knowledge about their respective thoughts and traditions (see paragraph 15 above). In the view of the Court, these intentions were clearly consonant with the principles of pluralism and objectivity embodied in Article 2 of Protocol No. 1.

89. The said intentions were indeed reflected in section 2-4 of the Education Act 1998 (see paragraph 23 above). As can be seen from its wording, the provision laid emphasis on the transmission of knowledge about not only Christianity but also other world religions and philosophies. It moreover stressed the promotion of understanding and respect for, and the ability to maintain dialogue between, people with different perceptions of beliefs and convictions. It was to be an ordinary school subject that should normally bring together all pupils and should not be taught in a preaching manner. The different religions and philosophies were to be taught from the standpoint of their particular characteristics and the same pedagogical principles were to apply to the teaching of the different topics. From the drafting history it emerges that the idea was that the aim of avoiding sectarianism and fostering intercultural dialogue and understanding could be better achieved with an arrangement, such as here, bringing pupils together within the framework of one joint subject rather than an arrangement based on full exemption and splitting pupils into sub-groups pursuing different topics (see paragraph 15 above). Moreover, it should be noted that, as

follows from the statement of principle in paragraph 84(g) above, the second sentence of Article 2 of Protocol No. 1 does not embody any right for parents that their child be kept ignorant about religion and philosophy in their education. That being so, the fact that knowledge about Christianity represented a greater part of the Curriculum for primary and lower secondary schools than knowledge about other religions and philosophies cannot, in the Court's opinion, of its own be viewed as a departure from the principles of pluralism and objectivity amounting to indoctrination (see, *mutatis mutandis*, *Angelini v. Sweden* (dec.), no 1041/83, 51 DR (1983). In view of the place occupied by Christianity in the national history and tradition of the respondent State, this must be regarded as falling within the respondent State's margin of appreciation in planning and setting the curriculum.

90. However, the Court observes that, while stress was laid on the teaching being knowledge-based, section 2-4(3) provided that the teaching should, subject to the parents' agreement and cooperation, take as a starting point the Christian object clause in section 1-2(1), according to which the object of primary and lower secondary education was to help give pupils a Christian and moral upbringing (see paragraphs 22-23 above).

91. It is further to be noted that the Christian object clause was compounded by a clear preponderance of Christianity in the composition of the subject.

92. In this regard, reference should be made to the stated aim in section 2-4(1)(i) of the Education Act 1998 to “transmit *thorough* knowledge of the Bible and Christianity in the form of cultural heritage and the Evangelical-Lutheran Faith” (emphasis added). In contrast, no requirement of thoroughness applied to the knowledge to be transmitted about other religions and philosophies (see paragraph 23 above).

In addition, pursuant to section 2-4(1)(ii), the transmission of knowledge of other Christian communities was an aim (see paragraph 23 above).

The difference as to emphasis was also reflected in the Curriculum, where approximately half of the items listed referred to Christianity alone whereas the remainder of the items were shared between other religions and philosophies. The Introduction stated that “The study of the subject is intended to give pupils a *thorough insight* into Christianity and what the Christian view of life implies as well as *sound* knowledge of other world religions and philosophies [emphasis added]” (see paragraph 49 above).

93. It is unclear whether the word “Faith” in item (i) implied qualitative differences compared to non-Lutheran faiths and other philosophies (see paragraph 23 above). In any event, the above factors laying stress on Christianity must have had implications for the operation of another stated aim in section 2-4(1), namely to “(iv) *promote* understanding and respect for Christian and humanist values [emphasis added]” (ibid.), indicating something more and other than the mere transmission of knowledge. In this regard, it may be noted that the Curriculum contained certain nuances regarding the teaching objectives, for example, pupils in grade 5 to 7 “should *learn the fundamentals* of the Christian faith and Christian ethics in

the light of the positions taken in Luther's Small Catechism” [emphasis added]. Regarding other religions, however, “pupils should *study the main features* of and important narratives from Islam, Judaism, Hinduism and Buddhism”; and pupils should *know about* secular orientation, the development of humanist traditions” and so on [emphasis added]. For grade 6 it was stated that “[p]upils should have the opportunity to learn the Ten Commandments by heart and be acquainted with the ethical ideals underlying the Sermon of the Mount, [and] learn something of how these fundamental ethical texts have been used in the history of Christianity and how they are applied today.” There was no equivalent in the list of items “to become acquainted” with in regard to “Other religions, Judaism” (see paragraph 50 above).

94. Moreover, section 2-4(4) implied that pupils could engage in “religious activities”, which would in particular include prayers, psalms, the learning of religious texts by heart and the participation in plays of a religious nature (see paragraphs 23 and 24 above). While it was not foreseen that such activities should relate exclusively to Christianity, but could also concern other religions, for example a visit to a mosque in the case of Islam, the emphasis on Christianity in the Curriculum would naturally also be reflected in the choice of educational activities proposed to pupils in the context of the KRL subject. As was recognised in the partial exemption rule in section 2-4 of the Education Act 1998 and Circular F-03-98, it would be reasonable for parents to notify their intention regarding an exemption for the kinds of religious activities referred to above. In the Court's view, it can be assumed that participation in at least some of the activities concerned, especially in the case of young children (see, *mutatis mutandis*, *Dahlab v. Switzerland* (dec.), no. 42393/98, ECHR 2001-V), would be capable of affecting pupils' minds in a manner giving rise to an issue under Article 2 of Protocol No. 1.

95. Thus, when seen together with the Christian object clause, the description of the contents and the aims of the KRL subject set out in section 2-4 of the Education Act 1998 and other texts forming part of the legislative framework suggest that not only quantitative but even qualitative differences applied to the teaching of Christianity as compared to that of other religions and philosophies. In view of these disparities, it is not clear how the further aim, set out in item (v): to “*promote* understanding, respect and the ability to maintain dialogue between people with different perceptions of beliefs and convictions, could be properly attained”. In the Court's view, the differences were such that they could hardly be sufficiently attenuated by the requirement in section 2-4 that the teaching follow a uniform pedagogical approach in respect of the different religions and philosophies (see paragraph 23 above).

96. The question then arises whether the imbalance highlighted above could be said to have been brought to a level acceptable under Article 2 of Protocol No. 1 by the possibility for pupils to request partial exemption from the KRL subject under section 2-4(4) of the Education Act 1998. Under this provision “a pupil shall, on the submission of a written parental

note, be granted exemption from those parts of the teaching in the particular school concerned that they, from the point of view of their own religion or philosophy of life, consider as amounting to the practice of another religion or adherence to another philosophy of life”.

In this regard the Court reiterates that, as pointed out in its admissibility decision of 14 February 2006, the limitations on the scope of the case that followed from the decision of 26 October 2004 declaring parts of the application inadmissible do not prevent it from considering the general aspects of the partial exemption arrangement in its examination of the complaint regarding the refusal of full exemption (see paragraph 8 above).

97. In this connection the Court notes that the operation of the partial exemption arrangement presupposed, firstly, that the parents concerned be adequately informed of the details of the lesson plans to be able to identify and notify to the school in advance those parts of the teaching that would be incompatible with their own convictions and beliefs. This could be a challenging task not only for parents but also for teachers, who often had difficulty in working out and dispatching to the parents a detailed lesson plan in advance (see paragraph 29 above). In the absence of any formal obligation for teachers to follow textbooks (see sub-title “10” in the citation at paragraph 48 above), it must have been difficult for parents to keep themselves constantly informed about the contents of the teaching that went on in the classroom and to single out incompatible parts. To do so must have been even more difficult where it was the general Christian leaning of the KRL subject that posed a problem.

98. Secondly, pursuant to Circular F-03-98, save in instances where the exemption request concerned clearly religious activities - where no grounds had to be given, it was a condition for obtaining partial exemption that the parents give reasonable grounds for their request (see the citation from the Circular in the Supreme Court's reasoning at paragraph 42 above). The Court observes that information about personal religious and philosophical conviction concerns some of the most intimate aspects of private life. It agrees with the Supreme Court that imposing an obligation on parents to disclose detailed information to the school authorities about their religions and philosophical convictions may constitute a violation of Article 8 of the Convention and, possibly also, of Article 9 (*ibid.*). In the present instance, it is important to note that there was no obligation as such for parents to disclose their own conviction. Moreover, Circular F-03-98 drew the school authorities' attention to the need to take duly into account the parents' right to respect for private life (*ibid.*). The Court finds, nonetheless, that inherent in the condition to give reasonable grounds was a risk that the parents might feel compelled to disclose to the school authorities intimate aspects of their own religious and philosophical convictions. The risk of such compulsion was all the more present in view of the difficulties highlighted above for parents in identifying the parts of the teaching that they considered as amounting to the practice of another religion or adherence to another philosophy of life. In addition, the question whether a request for exemption was reasonable was apparently a potential breeding ground for conflict, a

situation that parents might prefer simply to avoid by not expressing a wish for exemption.

99. Thirdly, the Court observes that even in the event that a parental note requesting partial exemption was deemed reasonable, this did not necessarily mean that the pupil concerned would be exempted from the part of the curriculum in question. Section 2-4 provided that “the school shall as far as possible seek to find solutions facilitating differentiated teaching within the school curriculum”. A detailed outline with examples of how differentiated teaching was to be implemented may be found in Circular F-03-98, from which it can be seen that the teacher was to apply, in cooperation with the parents, a flexible approach, having regard to the parents' religious or philosophical affiliation and to the kind of activity at issue. The Court notes in particular that for a number of activities, for instance prayers, the singing of hymns, church services and school plays, it was proposed that observation by attendance could suitably replace involvement through participation, the basic idea being that, with a view to preserving the interest of transmitting knowledge in accordance with the curriculum, the exemption should relate to the activity as such, not to the knowledge to be transmitted through the activity concerned (see paragraph 48 above). However, in the Court's view, this distinction between activity and knowledge must not only have been complicated to operate in practice but also seems likely to have substantially diminished the effectiveness of the right to a partial exemption as such. Besides, on a purely practical level, parents might have misapprehensions about asking teachers to take on the extra burdens of differentiated teaching (see paragraph 29 above).

100. In light of the above, the Court finds that the system of partial exemption was capable of subjecting the parents concerned to a heavy burden with a risk of undue exposure of their private life and that the potential for conflict was likely to deter them from making such requests. In certain instances, notably with regard to activities of a religious character, the scope of a partial exemption might even be substantially reduced by differentiated teaching. This could hardly be considered consonant with the parents' right to respect for their convictions for the purposes of Article 2 of Protocol No. 1, as interpreted in the light of Articles 8 and 9 of the Convention. In this respect, it must be remembered that the Convention is designed to “guarantee not rights that are theoretical or illusory but rights that are practical and effective” (see *Öcalan v. Turkey* [GC], no. 46221/99, § 135, ECHR 2005-).

101. According to the Government, it would have been possible for the applicant parents to seek alternative education for their children in private schools, which were heavily subsidised by the respondent State, as it funded 85% of all expenditure connected to the establishing and running of private schools. However, the Court considers that, in the instant case, the existence of such a possibility could not dispense the State from its obligation to safeguard pluralism in State schools which are open to everyone.

102. Against this background, notwithstanding the many laudable legislative purposes stated in connection with the introduction of the KRL

subject in the ordinary primary and lower secondary schools, it does not appear that the respondent State took sufficient care that information and knowledge included in the curriculum be conveyed in an objective, critical and pluralistic manner for the purposes of Article 2 of Protocol No. 1.

Accordingly, the Court finds that the refusal to grant the applicant parents full exemption from the KRL subject for their children gave rise to a violation of Article 2 of Protocol No. 1.

## II. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION TAKEN IN CONJUNCTION WITH ARTICLES 8 AND 9 OF THE CONVENTION AND ARTICLE 2 OF PROTOCOL NO. 1

103. The applicants argued that the system of partial exemption entailed difficulties and burdens for the parents that gave rise to discrimination. In contrast, the previous system with a general exemption and a non-confessional, pluralistic philosophy of life subject for those exempted would have satisfied both the school obligations and the parental rights as protected by the Convention.

104. The Government disputed the contention that requiring parents to request exemption from particular elements of the KRL subject (partial exemption) amounted to discrimination in violation of Article 14. The exemption clause of the Education Act 1998 was non-discriminatory. Exemptions were available to the same extent for all parents, regardless of, in the words of Article 14, “sex, race, colour, language, religion, political or other opinion, national or social origin...”. The exemption clause did not draw a line between Christians on the one hand and non-Christians on the other hand. Other subjects as well, such as history, music, physical education and social studies, might give rise to religious or ethical issues. The exemption clause included in section 2-4 of the Education Act 1998 applied to all subjects. In the reasoning of the parents, allowing for only partial exemption from these subjects as well would be discriminatory. In the Government's view, the only viable system both for those subjects and for the KRL subject was to allow for partial exemptions. If that were to constitute discrimination, Article 14 would render the implementation of most compulsory education impossible.

105. The Court, having regard to its findings above (see paragraphs 96 to 102 above), does not find it necessary to carry out a separate examination in relation to Article 14 of the Convention, taken in conjunction with Articles 8 and 9 of the Convention and Article 2 of Protocol No. 1.

### III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

106. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

#### A. Damage

107. The applicants sought no compensation for pecuniary damage but claimed an amount in respect of non-pecuniary damage, the amount of which was to be determined by the Court according to its own discretion, for suffering and distress caused by the violation of the Convention in their case.

108. The Government did not offer any comments on the above claim.

109. The Court's finding of a violation will have effects extending beyond the confines of this particular case, since the violation found stems directly from the contested legal framework and not from its manner of implementation. In view of the readiness expressed by the respondent Government to review the KRL subject, the Court is of the opinion that its finding of a breach of Article 2 of Protocol No. 1 constitutes sufficient just satisfaction for the purposes of Article 41 of the Convention.

#### B. Costs and expenses

110. The applicants further sought the reimbursement of legal costs and expenses, totalling 979,798 Norwegian *kroner* (“NOK”, approximately 117,000 euros (“EUR”)), in respect of the following items:

(a) NOK 308,558 incurred before the domestic courts;

(b) NOK 637,066 for the lawyer's work in the proceedings before the Court from 2002 to 2006;

(c) NOK 34,174 for the travel expenses for counsel, advisors and the applicants in connection with the oral hearing in Strasbourg on 6 December 2006.

The above amounts included value added tax (“VAT”).

111. The Government stated that they had no objection to the above claims.

112. According to the Court's case-law, an applicant is entitled to reimbursement of his or her costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. In the present case, regard being had to the information in its possession and the above criteria, the Court considers it reasonable to award items (a) and (c) in their entirety. As to item (b), however, the Court, recalling that parts of the application were declared inadmissible, is not satisfied that all the costs and expenses were necessarily incurred in order to obtain redress for the violation of the Convention. It

considers it reasonable to award a total sum of EUR 70,000 for the applicants' costs and expenses (inclusive of VAT).

### C. Default interest

113. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

### FOR THESE REASONS, THE COURT

1. *Holds* by nine votes to eight that there has been a violation of Article 2 of Protocol No. 1;
2. *Holds* unanimously that it is not necessary to examine the applicants' complaint under Article 14 of the Convention taken in conjunction with Articles 8 and 9 of the Convention and Article 2 of Protocol No. 1;
3. *Holds* unanimously that the finding of a violation constitutes in itself sufficient just satisfaction for the non-pecuniary damage sustained by the applicants;
4. *Holds* unanimously
  - (a) that the respondent State is to pay the applicants jointly, within three months, EUR 70,000 (seventy thousand euros) in respect of costs and expenses, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement;
  - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
5. *Dismisses* unanimously the remainder of the applicants' claim for just satisfaction.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 29 June 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Vincent BERGER  
Jurisconsult

Jean-Paul COSTA  
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the following opinions are annexed to this judgment:

- (a) separate opinion of Mr Zupančič and Mr Borrego Borrego;
- (b) joint dissenting opinion of Mr Wildhaber, Mr Lorenzen, Mr Bîrsan, Mr Kovler, Mrs Steiner, Mr Borrego Borrego, Mr Hajiyeu and Mr Jebens.

J-P.C.

V.B.

## SEPARATE OPINION OF JUDGES ZUPANČIČ AND BORREGO BORREGO

We regret that the Grand Chamber has not declared this application inadmissible and that the First Section's decision of 14 February 2006 has not been revised in accordance with Article 35 § 2 b) of the Convention.

In our opinion, this application is inadmissible and the Grand Chamber could and should have declared it inadmissible.

### *1. The Grand Chamber could have declared the application inadmissible.*

Article 35 § 4 of the Convention provides that the Court “shall reject any application which it considers inadmissible under this Article. It may do so at any stage of the proceedings”.

Under that provision, an application was declared inadmissible after having been admitted by the Chamber (*Hobbs, Richard, Walsh and Geen v. United Kingdom*, nos. 63684/00, 63475/00, 63484/00 and 63468/00, 14 November 2006). In *Mihailescu v. Romania* ((dec), no. 32913/96, 22 June 2004) the Chamber also reviewed a previous admissibility decision even though the Government had not raised a plea of inadmissibility at the proper stage of the proceedings.

The Grand Chamber has previously declared that it may reconsider the admissibility decision of the Chamber in case of referral to the Grand Chamber under Article 43 of the Convention, whether the Government raise a plea of inadmissibility at the proper stage of the proceedings (*Azinas v. Cyprus* [GC], no. 56679/00, § 32, CEDH 2004-III) or not (*Blečić v. Croatia* [GC], no. 59532/00, § 65, ECHR 2006-).

According to the judgment in *Blečić v. Croatia*, the Grand Chamber may reconsider of its own motion the questions concerning its own domain even if the Government have not raised a plea of inadmissibility. Obviously, international litispendence is a matter to which the Court must have regard.

It should be borne in mind that, in the present case, the Third Section decided, with regard to the question of international litispendence, to “adjour[n] this question for a future examination together with the substance of the applicants' complaints” (decision of 26 October 2004). The case was subsequently transferred to the First Section, which decided on 14 February 2006 that “the Government's request to the Court to declare the application inadmissible under Article 35 § 2 b) of the Convention must be rejected”.

2. *The Grand Chamber should have declared the application inadmissible.*

As to the scope of the case before the domestic courts, there was a single case: “The applicants' complaints regarding full exemption from the KRL subject had been adjudicated in a single case together with identical claims from four other sets of parents. Before the Supreme Court and the lower courts, all the plaintiffs had been represented by the same lawyer and had all made identical claims. The lawyer had made one simple presentation on behalf of all parties, and no attempts had been made to individualize the cases of the different parties. Accordingly, the claims had been adjudicated as one by the domestic courts, which had passed single judgements in which all the petitioners' claims had been dealt with as a whole” (decision of 14 February 2006).

Once the case had been examined by the domestic authorities, it was submitted to the European Court of Human Rights on 15 February 2000. One month and ten days later, the case was submitted to the Human Rights Committee in Geneva. “The complaints made to the respective institutions concerned substantially the same matters ... The essential parts of their complaints were the same, word by word” (decision of 14 February 2006).

In short: seven families, all together in a united group, and a single set of domestic proceedings which resulted in a single judgment by the Supreme Court. Nevertheless, despite having submitted a joint application before the domestic courts, three of these families lodged a petition before the European Court of Human Rights and the four others did the same before the Human Rights Committee in Geneva.

The Human Rights Committee admitted the petition in November 2004 as “the authors have demonstrated that they are individuals distinct from those of the three sets of parents that filed a complaint with the ECHR”.

As to the European Court of Human Rights, in February 2006 it decided that, “notwithstanding the common features between the application lodged under the Convention in Strasbourg and the communication filed under the UN Covenant in Geneva”, there was no personal identity between the two groups of families and therefore rejected the Government's request to declare the application inadmissible.

Article 35 § 2 b) of the Convention and Article 5 § 2 a) of the Optional Protocol of the UN Covenant share the same purpose, which is to prevent two different international organs from providing different or even contradictory interpretations concerning “the same matter”.

In *Cereceda Martin and Others v. Spain* (no. 16358/90) the former European Commission of Human Rights declared the application inadmissible on the ground that “*whilst it is true that, formally speaking, the 23 individual applicants before the Commission are not the complainants*

*who appeared before the organs of the ILO,...the parties can be regarded as essentially identical”.*

International bodies examine domestic decisions given in domestic proceedings in which any of the parties (claimants or defendants) can be an individual or a group of individuals.

Both the Human Rights Committee (without a prior decision of the ECHR) and the European Court of Human Rights (aware of the Human Rights Committee's decision) came to the conclusion that the key issue was not whether there had been a single set of domestic proceedings, or whether the single judgment had been examined by two different international bodies, or whether the facts submitted before the two organs were identical. No. What really mattered was the fact that, as the applicants were a group of individuals, some of them had opted to petition the Human Rights Committee and some of them had submitted an application to the European Court of Human Rights. To put it briefly, different applicants of the same party had addressed different international bodies.

International litispendence exists if the case concerns “the same matter”, “the same judgment”, “the same complaint”, “the same party” and the like. In this case, according to the interpretation given by the majority, international litispendence ceases to exist when different individuals of the original group of applicants decide to separate in two groups to submit the same matter before different international organs.

Nevertheless, the risk of contradictory decisions, in which international litispendence has its origin, does exist. This is an example of what the Convention and the Optional Protocol tried to avoid. Unfortunately, their subsequent interpretation by the competent international organs has deprived them of their original sense.

The Court's judgment, adopted by nine votes to eight, may lead us to think that the exception of litispendence has been buried, even if – as contradictory as it may seem – in the present case it shows signs of being in good health. This is a pity.

JOINT DISSENTING OPINION OF JUDGES WILDHABER,  
LORENZEN, BÎRSAN, KOVLER, STEINER, BORREGO  
BORREGO, HAJIYEV AND JEBENS

We do not share the opinion of the majority, expressed above, that there has been a violation of Article 2 of Protocol No. 1 in this case. Our reasons for this are as follows.

First of all, it is necessary to clarify the scope of the case before the Court. On 26 October 2004 the Court declared the application inadmissible as far as the children were concerned, and also declared inadmissible the parents' complaints about the possibilities and modalities for obtaining a partial exemption from the KRL subject. The inadmissibility decisions were based on failure to exhaust domestic remedies in that the children had not been parties to the domestic proceedings and the applicant parents' lawsuit and appeal to the Supreme Court had been directed against the KRL subject and its implementation generally and against the impossibility of obtaining a full exemption from the subject.

The scope of the case before the Court is therefore more limited than that reviewed on the merits by the UN Committee in the parallel case brought by four other sets of parents who had been parties to the same domestic proceedings and by their children. The Committee had declared the case admissible as a whole and had reviewed not only the children's concrete situation, but also the complaint about partial exemption (see paragraphs 43 to 45 of the judgment). Therefore, our conclusions should not be viewed as contradicting those reached by the UN Committee in the other case.

As pointed out in the admissibility decision of 14 February 2006, the limitations as to the scope of the case that follow from the inadmissibility decision of 26 October 2004 do not prevent the Court from considering the general aspects of the partial exemption arrangement in its examination of the complaint regarding the refusal of full exemption. However, it would not be in conformity with the limited scope of the case, as clarified above, if the Court were to undertake an evaluation of the partial exemption scheme or even discuss how it worked in practice. In our view, the majority of the Court overstep the limitations as to the scope of the case when discussing the partial exemption scheme and how it works in detail (see paragraphs 97 to 100 of the judgment). The case before the Court is clearly only the KRL subject in general, with a possibility of a partial, but not a full exemption. This coincides with the issue that was presented before the Supreme Court. Consequently, our examination will not deal with the applicant's arguments based on the textbooks, which were not binding on the teachers and represented only one of several possible teaching aids.

In our opinion, a review of the case requires a twofold approach, namely, in the light of the requirements of modern Norwegian society and with its history as an important background. On the one hand, the increasing number

of Norwegian citizens with different ethnicities and religious beliefs calls for inclusive measures, with a common education in religions and ethics in schools. On the other hand, when devising the curriculum, one cannot overlook the many centuries of Norwegian history. Christianity has a very long tradition in Norway, both as a religion and a school subject (see paragraphs 9 and 10 of the judgment). This aspect must be reflected in the curriculum, which must at the same time be inclusive and broad.

Article 2 of the Constitution guarantees freedom of religion in its first paragraph, but states in its second paragraph that the Evangelical Lutheran Religion is to be the State's official religion. No less than 86 % of the population are members of the State Church (see paragraph 9 of the judgment). Furthermore, the second paragraph confers on its adherents an obligation to educate their children likewise. It is, however, no longer accompanied by any sanctions and in the legal doctrine today is not regarded as a legal obligation (see Johs. Andenæs and Arne Fliflet, *Statsforfatningen i Norge*, 10<sup>th</sup> edition, 2006, pp. 391-392).

Unlike the majority, who do not take a stance on this, we find it necessary to address the question whether the second paragraph of Article 2 of the Constitution is capable of raising an issue under Article 2 of Protocol No. 1 or Article 9 of the Convention. In our opinion, it is not. The notion of pluralism embodied in these provisions should not prevent a democratically elected political majority from giving official recognition to a particular religious denomination and subjecting it to public funding, regulation and control. Conferring a particular public status on one denomination does not in itself prejudice the State's respect for parents' religious and philosophical convictions in the education of their children, nor does it affect their exercise of freedom of thought, conscience and religion.

We are not persuaded by the applicants' argument that the mention in section 2-4 (3) that the teaching should take as a starting point the Christian object clause in section 1-2(1) gave the subject a strong Christian leaning. As was clear from the wording of the latter provision, the object – to “help give pupils a Christian and moral upbringing” – was contingent on the parents' “agreement and cooperation” (see paragraph 22 of the judgment). The provision made no exception to the rule laid down in the preceding paragraph that the KRL subject was an ordinary school subject that should not be taught in a preaching manner. It suggests no departure from the requirements that the teacher should present all the different religions and philosophies from the standpoint of their particular characteristics and apply the same pedagogical principles to the teaching of the different topics. These principles applied across the board to all aspects of the curriculum, including activities such as prayers, psalms, the learning of religious texts by heart and the participation in plays of a religious nature.

While Christianity represented a greater part of the curriculum than other world religions and philosophies, it should be emphasised that the latter,

covering a wide spectrum of world religions and philosophies, constituted roughly a half, or at least a major part, of the subject (see paragraph 23 of the judgment). We see no reason to doubt that the aims set out in items (i) to (iii) – to transmit knowledge about Christianity and other world religions and philosophies – served to forward a further aim, stated in item (v): to promote understanding, respect and the ability to maintain a dialogue between people with different perceptions, beliefs and convictions (*ibid.*). The notion of knowledge went hand in hand with mutual understanding and respect and with intercultural dialogue.

Furthermore, it should be stressed that the aim in item (iv) – to promote understanding and respect for values – embraced not just Christian, but also humanist values. This was indeed reflected in the curriculum, which laid down “Development and moral awareness” as an objective for grades 1 to 7, with the angle “I and others” for grades 1 to 4 and “Values and Choices” for grades 5 to 7, and “Philosophical Interpretations of Man – values and norms” for grades 8 to 10.

Against this background, we do not find that the legal framework implied qualitative differences regarding the teaching of Christianity as compared with that of other religions and philosophies. The fact that Christianity was given priority is true only as far as the quantity of the different religions and other elements of the KRL subject is concerned. Furthermore, it is important to note that Christianity is not only the state religion of Norway, but also forms an important part of Norwegian history. In our opinion, the KRL subject clearly fell within the limits of the competence of the Contracting States under Article 2 of Protocol No. 1 (see the reference from *Kjeldsen, Busk Madsen and Pedersen*, § 53 in paragraph 84 (g)).

Furthermore, we do not agree that the partial exemption scheme gives reason to reach a different conclusion. On the contrary, the possibility of obtaining a partial exemption from the KRL subject takes into account the needs of parents who belong to religions other than Christianity or to no religion at all. Under section 2-4(4) “a pupil shall, on the submission of a written parental note, be granted exemption from those parts of the teaching in the particular school concerned that they, from the point of view of their own religion or philosophy of life, consider as amounting to the practice of another religion or adherence to another philosophy of life”.

In our view, it was not unreasonable to expect that parents who might want an exemption would take appropriate steps to inform themselves about the contents of the subject, by for instance consulting the curriculum. Nor do we find anything abnormal or intrusive about the requirement to give reasons. It is not uncommon that in their relations with the authorities citizens are asked to give certain information, even of a sensitive personal nature, when seeking exemption from a general obligation. The fact that such a possibility is more frequently solicited by some groups than by others does not in itself mean that the exemption scheme is arbitrary. In this

instance, no grounds had to be given for a parental notice of a request for an exemption from activities such as prayers, psalms, the learning of religious texts by heart and participation in plays of a religious nature. Grounds had to be given if the request concerned other aspects of the curriculum but with the sole purpose of enabling the school to assess whether the parent held a reasonable perception that the teaching would amount to the practice of or adherence to another religion or philosophy of life. This was not tantamount to requiring the parents to disclose their own conviction. In this connection it should be borne in mind that, under Article 2 of Protocol No. 1, the question is whether the teaching would be contrary to the parents' "convictions", a term that is not synonymous with the words "opinions" and "ideas" but denotes views that attain a certain level of cogency, seriousness, cohesion and importance (see *Valsamis*, cited above, § 25).

In the light of these considerations, we do not find that the arrangement for a partial exemption entailed an excessive or unreasonable burden for parents who wished to make a request for an exemption, transgressing the margin of appreciation of the respondent State under Article 2 of Protocol No. 1, as interpreted in the light of Articles 8 and 9 of the Convention.

Moreover, certain safeguards existed in respect of decisions taken by the school authorities on parental notice of a request for a partial exemption. Such decisions could be appealed against to the National Education Office and, ultimately, to the national courts (see subtitle 8 of the citation in paragraph 48 of the judgment).

We have further taken note of the provision in section 2-4(4) applying to situations where a partial exemption has been requested, namely that "the school shall as far as possible seek to find solutions facilitating differentiated teaching within the school curriculum" (see paragraph 23 of the judgment). A detailed outline with examples of how differentiated teaching was to be implemented may be found in Circular F-03-98, from which it can be seen that the teacher was to apply, in cooperation with the parents, a flexible approach, having regard to the parents' religious or philosophical affiliation and to the kind of activity at issue. We note in particular that for a number of activities, for instance prayers, the singing of hymns, church services and school plays, it was proposed that observation by attendance could suitably replace involvement through participation, the basic idea being that, with a view to preserving the interest of transmitting knowledge in accordance with the curriculum, the exemption should relate to the activity as such, not to the knowledge to be transmitted through the activity concerned (see paragraph 48 of the judgment). We find no reason to question this approach, which was a matter of expediency that fell within the national margin of appreciation as to the planning and setting of the curriculum.

Against this background, we are satisfied that the respondent State, in fulfilling its functions in respect of education and teaching, had taken care

that information or knowledge included in the curriculum of the KRL subject was conveyed in an objective, critical and pluralistic manner. It could not be said to have pursued an aim of indoctrination contrary to the parents' right to respect for their philosophical convictions and thereby transgressing the limits implied by Article 2 of Protocol No. 1.

Accordingly, the refusal to grant the applicant parents a full exemption from the KRL subject for their children did not entail a violation of Article 2 of Protocol No. 1.