



Complaints against Germany about mandatory sex education classes declared inadmissible

In its decision in the case of [Dojan and others v. Germany](#) (application nos. 319/08, 2455/08, 7908/10, 8152/10 and 8155/10), the European Court of Human Rights has unanimously declared the applications inadmissible. The decision is final.

The case concerned the complaints by five married couples about the authorities' refusal to exempt their children from mandatory sex education classes and other school activities which they alleged had constituted, in particular, a disproportionate restriction of their right to educate their children in conformity with their religious convictions.

Principal facts

The applicants are five married couples, Willi and Anna Dojan, Theodor and Lydia Fröhlich, Artur and Anna Wiens, Eduard and Rita Wiens, and Heinrich and Irene Wiens. All of them are German nationals. As members of the Christian Evangelical Baptist Church they have strong moral beliefs. They each have several children who attend or attended a local public primary school in Salzkotten, North Rhine-Westphalia (Germany).

In June 2005, Mr and Mrs Dojan and Mr and Mrs Fröhlich, requested that their children be exempted from the sex education lessons which were to be held for fourth-grade pupils. They objected in particular to the content of the book to be used for those lessons, which they considered partly pornographic and contrary to Christian sexual ethics requiring that sex should be limited to matrimony. The school refused the request on the grounds that, according to the relevant guidelines and the curriculum, attendance at the lessons was mandatory. The two children concerned attended the first two sex education lessons, but their parents prevented them from attending the following lesson and subsequently kept them off school for one week during which the remaining lessons were held. Each parent was fined 75 euros (EUR) for not sending their children to school.

In January and February 2007, Mr and Mrs Dojan, kept one of their daughters off school while a theatre workshop entitled "My body is mine" was held, which aimed to raise awareness of the problem of sexual abuse of children by strangers or family members with a view to its prevention. The subject of prevention of sexual abuse was part of the school curriculum of the *Land* of North Rhine-Westphalia. Mr and Mrs Dojan argued that they regarded the workshop and the complementary lessons as harmful to the moral development of their daughter. They were fined EUR 120 each. In February 2007, Eduard and Rita Wiens prevented one of their children, and Heinrich and Irene Wiens prevented three of their children, from attending the theatre workshop. The same month, Eduard and Rita Wiens and Artur and Anna Wiens further prevented two of their respective children from attending the school carnival celebrations on the grounds that they were inconsistent with their religious and moral beliefs. Eduard, Rita, Heinrich and Irene Wiens were each fined EUR 80, and Artur and Anna Wiens were both fined EUR 40 by the school authorities for not sending their children to the mandatory school events.

All fines were upheld by the Paderborn District Court, which held, in particular, that parents' right to educate their children and their right to freedom of religion was restricted by the State's mandate to provide for education, which was implemented by means of compulsory schooling. With regard to the theatre workshop, it held that the transmission of knowledge in the field of sexual violence and abuse with a view to

providing children with tools to find help in difficult situations also fell within the educational mandate of the State. As regards the carnival celebrations, the court found that, as they had not been accompanied by any religious activities and their sole purpose had been that the pupils could celebrate together until the end of morning lessons, the State's duty of neutrality and tolerance had been observed. Furthermore, the children would have had the opportunity to attend alternative events.

The Hamm Court of Appeal dismissed the applicants' appeals in each case. The Federal Constitutional Court, in June and October 2007 and in November 2008 respectively, refused to admit the constitutional complaints lodged by Mr and Mrs Dojan and Mr and Mrs Fröhlich without providing reasons. On 21 July 2009, the Federal Constitutional Court, by a reasoned decision, refused to admit a constitutional complaint lodged by Eduard and Rita Wiens against the court decisions rendered in their respect. It underlined that, while the State had the right to pursue its own educational goals, it was nevertheless under an obligation to act in a neutral and tolerant manner vis-à-vis the educational views of parents. In the Federal Constitutional Court's view, the lower courts' decisions had complied with these principles. By a decision of the same date, the Federal Constitutional Court refused to admit a constitutional complaint lodged by Artur and Anna Wiens without providing reasons.

The three Wiens couples subsequently continued to prevent several of their children from attending the same education modules and school events. They were subject to increasing fines, which they refused to pay. As the authorities' attempts to enforce payment were unsuccessful, they were each sentenced to imprisonment of up to 43 days in accordance with the relevant provisions of domestic law.

Complaints, procedure and composition of the Court

The case originated in five applications which were lodged with the European Court of Human Rights on 19 December 2007 (Dojan v. Germany), 10 January 2008 (Fröhlich v. Germany), and 5 February 2010 (Wiens v. Germany 7908/10, 8152/10 and 8155/10) respectively.

Relying in particular on Article 2 of Protocol No. 1 (right to education) to the European Convention on Human Rights and Articles 9 (freedom of thought, conscience and religion) and 8 (right to respect for private and family life) of the Convention, the applicants complained, in particular, that the domestic authorities' refusal to exempt their children from the mandatory sex education classes and school activities in question had constituted a disproportionate restriction of their right to educate their children in conformity with their religious convictions.

The decision was given by a Chamber of seven, composed as follows:

Dean **Spielmann** (Luxembourg), *PRESIDENT*,
Elisabet **Fura** (Sweden),
Karel **Jungwiert** (the Czech Republic),
Boštjan M. **Zupančič** (Slovenia),
Mark **Villiger** (Liechtenstein),
Ganna **Yudkivska** (Ukraine),
Angelika **Nußberger** (Germany), *JUDGES*,

and also Claudia **Westerdiek**, *SECTION REGISTRAR*.

Decision of the Court

Article 2 of Protocol No. 1

The Court had previously found that the German system of compulsory elementary school attendance, while home education was generally excluded, aimed at ensuring the integration of children into society with a view to avoiding the emergence of parallel societies. Those considerations were in line with the Court's case-law on the importance of pluralism for democracy.

In the applicants' case, the sex education classes, from which they had requested exemption for their children, had, as stated by the domestic courts, aimed at the neutral transmission of knowledge about procreation, contraception, pregnancy and child birth, based on current scientific and educational standards. The goal of the theatre workshop had been to raise awareness of sexual abuse of children with a view to its prevention. The domestic courts' decisions had reflected the objectives stipulated in the relevant provisions of the school act of the *Land*, in particular that sexual education should provide pupils with the necessary knowledge, according to their age and maturity, to enable them to develop their own moral views and an independent approach towards their own sexuality. The domestic courts had argued that those classes were necessary to enable children to deal critically with influences from society instead of avoiding them. The Court found that those objectives were consistent with the principles of pluralism and objectivity embodied in Article 2 of Protocol No. 1.

The carnival celebrations in question had not been accompanied by any religious activities and, as the domestic courts had underlined, the possibility of attending alternative activities had aimed to accommodate the moral and religious convictions of children and parents belonging to the Christian Evangelical Baptist community as far as possible.

There was no indication that the classes and activities at issue had put into question the parents' sexual education of their children based on their religious convictions. Neither had the school authorities manifested a preference for a particular religion or belief within those activities. The Court underlined that the Convention did not guarantee the right not to be confronted with opinions that were opposed to one's own convictions. The applicants had furthermore been free to educate their children after school and at weekends in conformity with their religious convictions.

In refusing exemption of the applicants' children from the classes at issue, the German authorities had not overstepped their margin of appreciation under Article 2 of Protocol No. 1. There was moreover nothing to establish that the fines imposed on them had been excessive or had been determined in an arbitrary manner. The prison sentences imposed on the Wiens parents had not constituted a sanction for the administrative offence they had committed but had solely been a means to enforce their payment obligation. The complaint therefore had to be rejected as manifestly ill-founded.

Other articles

In view of those findings, the Court held that no separate issues arose under Article 8 or Article 9.

The decision is available only in English.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.