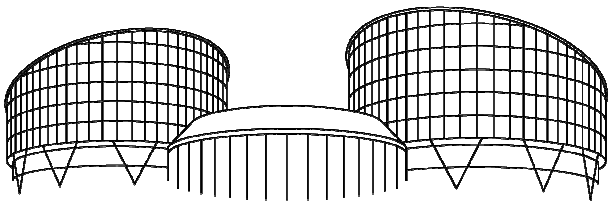

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 319/08
Willi, Anna and David DOJAN against Germany
and 4 other applications
(see list appended)

The European Court of Human Rights (Fifth Section), sitting on 13 September 2011 as a Chamber composed of:

Dean Spielmann, *President,*
Elisabet Fura,
Karel Jungwiert,
Boštjan M. Zupančič,
Mark Villiger,
Ganna Yudkivska,
Angelika Nußberger, *judges,*

and Claudia Westerdiek, *Section Registrar,*

Having regard to the above applications lodged on 19 December 2007 by the applicants Dojan, on 10 January 2008 by the applicants Fröhlich and on 5 February 2010 by the applicants Wiens respectively,

Having deliberated, decides as follows:

THE FACTS

The applicants are German nationals who all live in Salzkotten, North Rhine-Westphalia.

Mr Willi Dojan, a locksmith, and his wife Anna Dojan, a housewife, who were born in 1960 and 1966 respectively, lodged a complaint in their own

right and as representatives of their son David, who was born in 1993 (application no. 319/08).

Mr Theodor Fröhlich, a locksmith, and his wife Lydia, a housewife, born in 1967 and 1964 respectively, lodged a complaint in their own right and as representatives of their daughter Elly, who was born in 1995 (application no. 2455/08).

Applications were also lodged by Mr Artur Wiens, a carpenter, and his wife Anna Wiens, a housewife, who were born in 1975 and 1977 respectively (application no. 7908/10), Mr Eduard Wiens, an electronic mechanical engineer, and his wife Rita Wiens, a housewife, who were born in 1972 and 1974 respectively (application no. 8152/10), and Mr Heinrich Wiens, a cabinetmaker, and his wife Irene Wiens, a housewife, who were born in 1961 and 1965 respectively (application no. 8155/10). Messrs Artur, Eduard and Heinrich Wiens are brothers.

The applicants Dojan and the three couples Wiens were represented before the Court jointly by Mr R. Kiska, a lawyer practising in Bratislava and Mrs G. Eckermann, a lawyer practising in Dreieich. The applicants Fröhlich were represented by Mrs G. Eckermann alone.

A. The circumstances of the case

The facts of the case, as submitted by the applicants, may be summarised as follows.

1. Background to the case

The applicants are members of the Christian Evangelical Baptist Church and hold strong moral beliefs as part of their religious faith.

Each of the five couples have several children who attend or who attended a local public primary school in Salzkotten, North Rhine-Westphalia.

Mandatory sex education classes form part of the school curriculum in the fourth year of primary schooling. In 2006, the school conference (*Schulkonferenz*) – a body established at every school consisting of the school's principal and elected representatives of teachers, parents and pupils – had further decided that a two-day school theatre workshop "*Mein Körper gehört mir*" ("My body is mine") should be organised at regular intervals as a mandatory school event for children in the third and fourth years, comprising the age group between seven and nine, for the purpose of raising 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 is part of the official curriculum in the Federal *Land* of North Rhine-Westphalia and the said theatre workshop is run at numerous schools in the *Land*. In the course of role play, children are presented with different situations in which sexual

abuse might occur and are taught that they may resist behaviour that makes them feel uncomfortable and how to report such behaviour to a person of trust if need be. Parents were informed of the content and purpose of the workshop prior to its implementation in 2007. Two-day workshop modules took place on 18 and 25 January and on 7 and 14 February 2007, as well as during school terms in subsequent years.

In addition, it is a school tradition at the Salzkotten primary school to organise an annual carnival celebration for pupils called the "*Lütke Fastnacht*". By a decision of the school conference of 23 October 2006, the celebrations for the year 2007 were fixed for 15 February 2007 and parents were informed accordingly. Attendance at the celebrations is compulsory until the official end of morning school lessons. Children are free to dress up and wear costumes during the celebrations and to participate in a carnival procession that is organised in the school yard following compulsory school hours. Since 2006 the school has offered swimming classes or exercise in the gym as an alternative activity for children who do not wish to attend the compulsory school carnival celebrations in the morning.

2. The applicants Dojan (application no. 319/08) and Fröhlich (application no. 2455/08)

(a) The events in 2005

In spring 2005 David Dojan and Elly Fröhlich attended the fourth year of the Salzkotten public primary school. By letter dated 31 May 2005, the parents of the children who attended the fourth year were informed that six sexual education lessons were to be held as from 1 June 2005 dealing with subjects such as procreation, pregnancy and child birth. They were further informed that parents had the opportunity to look at the book to be used for these lessons as from the following school day – that is, on 1 June 2005.

After having looked at the book, the Dojan and Fröhlich parents, together with other parents belonging to the Christian Evangelical Baptist Church and whose children attended the same school, requested that their children be exempted from sex education classes in the period from 1 to 17 June 2005. They asserted that their children had been raised without the negative influence of the media, had been used to modest and chaste sexual behaviour at home and did thus not have the necessary maturity to receive the envisaged sex education. The parents objected in particular to the book's content, which in their opinion was partly pornographic and contrary to Christian sexual ethics requiring that sex should be limited to matrimony. In their view, it set forth a liberal, emancipatory image of sexuality which was not consistent with their religious and other moral beliefs and would lead to premature "sexualisation" of the children.

The school refused the request on the grounds that, according to the relevant guidelines and the curriculum, attendance at the lessons was

mandatory. David Dojan and Elly Fröhlich attended the first two sex education lessons. Following the refusal of a further request to exempt their children from sex education classes, several parents belonging to the Baptist Christian Evangelical Church, including the Dojan and Fröhlich parents, appeared in the school building on 8 June 2005 and prevented their children from attending the next sexual education lesson, against the school principal's wishes. The principal and class teacher subsequently decided to hold the lessons at irregular intervals and at unannounced hours in order to hinder any obstruction by the parents. Consequently, the parents kept their children off school for the whole week of 13 to 17 June 2005, during which the remaining sexual education lessons were held.

Willy and Anna Dojan, as well as Theodor and Lydia Fröhlich, were each fined 75 euros (EUR) for not sending their children to school during the aforementioned period. The Paderborn District Court upheld the fines imposed in the case of the Dojan couple by a judgment of 5 September 2006 and in the case of the Fröhlich couple by a judgment of 13 October 2006, holding that to keep the children off school without having been granted the necessary exemption by the school's principal had not been justified.

In its judgment of 5 September 2006 the court held that the 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. The neutral transmission of knowledge regarding reproduction, contraception and so forth in school did not prevent the parents from conveying their moral values to their children and did not infringe the personal rights of the children.

In its judgment of 13 October 2006 the court further specified that the lessons had been held in accordance with the underlying legal provisions and the ensuing guidelines and the curriculum, which had been based on current scientific and educational standards. The same was true for the teaching materials used, which had delicately introduced the subject of sexuality and childbirth to the reader and which had helped to counteract any possible sense of shame. Sexual education for the concerned age group was necessary with a view to enabling children to deal critically with influences from the society, instead of avoiding them and being isolated. The court specified that in any event the applicants had not been entitled to prevent their children from attending mandatory lessons but could have used legal means to obtain an exemption for the children from the lessons at issue by, for instance, lodging a request for interim measures with the competent administrative courts.

The Hamm Court of Appeal dismissed appeals on points of law subsequently brought against the above judgments by a decision of 26 February 2007 with respect to the Dojan couple and by a decision of 26 June 2007 with respect to the Fröhlich couple. The Court of Appeal found that it was established case-law that compulsory schooling constituted

an admissible restriction of parents' rights to freedom of religion and to educate their children. In its decision of 26 June 2007 the Court of Appeal stressed in addition that the State's mandate to provide education was not limited to the transmission of knowledge but also aimed at educating responsible and emancipated citizens capable of participating in the democratic processes of a pluralistic society with a view, in particular, to integrating minorities and avoiding the formation of religiously or ideologically motivated "parallel societies".

On 12 June and 10 October 2007 respectively the Federal Constitutional Court refused to admit the related constitutional complaints without providing reasons.

(b) The events in 2007

On 18 and 25 January 2007 Willi and Anna Dojan also kept one of their daughters, who was born in 1997, off school, as the theatre workshop "My body is mine" was running on those days. They also prevented her from attending accompanying sexual education classes in February 2007. They argued that, while they were not opposed to sexual education in school in general, they regarded the particular curriculum used as being harmful to the moral development of their daughter. They were fined EUR 120 each.

The Paderborn District Court upheld the fines by a judgment of 27 May 2008. 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 and that the religious motives cited by the parents did not constitute sufficient justification to prevent the child's school attendance. It further found that the fine of EUR 120 had been justified in view of the previous conviction of the couple by the court's judgment of 5 September 2006.

The Hamm Court of Appeal dismissed an appeal on points of law brought by the couple by a decision of 26 August 2008.

On 10 November 2008 the Federal Constitutional Court refused to admit their subsequent constitutional complaint without providing reasons.

3. The applicants Wiens (applications nos. 7908/10, 8152/10 and 8155/10)

(a) The events in 2007

On 7 and 14 February 2007 Eduard and Rita Wiens prevented one of their children, and Heinrich and Irene Wiens prevented three of their children, who would have been in the envisaged age group, from attending the school theatre workshop "My body is mine". They stated that it was incompatible with their religious convictions to make a child's own feelings

and will the basis of his or her sexual behaviour, as this would encourage them to act according to their sexual desire like an adult, lose their sense of shame and engage in sexual acts with adults. The biblical doctrine of chastity, limiting sexuality to matrimony, constituted sufficient protection against sexual abuse and there was no scientific proof that the theatre workshop had a preventive effect in this respect.

On 15 February 2007, each of 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 and the religious education they provided to their children. They stated that, in their opinion, the "*Lütke Fastnacht*" carnival was a Catholic festivity which was directed by carnal desire and accompanied by immoral and uninhibited behaviour. They claimed that they had not been aware that their children would have had the alternative opportunity to attend swimming lessons and that they had not sent their children to school in order that the children not be exposed to the carnival celebrations in the classroom or the gym. Compulsory attendance at such an event constituted a violation of their freedom of conscience and religion, as well as their right to educate their children.

Each of Eduard, Rita, Heinrich and Irene Wiens were 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 without having obtained prior exemption from the school principal.

The Paderborn District Court upheld the fines by separate judgments of 11 June 2008 in respect of each of the three couples.

Concerning the school theatre workshop, it found that the parents' constitutionally guaranteed right to educate their children in accordance with their religious and moral beliefs and their children's right to freely determine their attitude towards sexual matters were on an equal footing with – and restricted by – the State's mandate to provide for school education. While the State could pursue its own educational goals, it had to be neutral and tolerant towards the parents' views and refrain from systematic political, ideological or moral manipulation. As regards sexual education in school, the school authorities had had to take into account the children's natural sense of shame and had been required to consider the parents' related moral and religious beliefs. The court was of the opinion that the school theatre workshop in the case at hand had been solely aimed at raising awareness regarding the subject of sexual abuse, which was undeniably a matter where there was a need for action by the State in order to protect children at an early stage. The school event had not promoted or rejected specific sexual behaviour and had not put into question any sexual doctrine based on the applicants' religious beliefs.

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 had had the opportunity to attend alternative events and their parents must have been aware of that alternative, which had also showed that the school authorities had tried to accommodate the religious and moral beliefs of the several children belonging to the Baptist faith in the local primary school to the extent possible, bearing in mind the proper functioning of the school system.

The Hamm Court of Appeal dismissed appeals on points of law lodged by each of the couples. It did so by decisions of 5 March 2009 with respect to Eduard and Rita Wiens and Artur and Anna Wiens and by two decisions of 31 March 2009 it dismissed related complaints by the two couples of a violation of their right to be heard.

By a decision of 16 July 2009 the Hamm Court of Appeal dismissed the appeal on points of law lodged by Heinrich and Irene Wiens against the District Court's judgment of 11 June 2008. The Court of Appeal's decision was served on their counsel on 10 August 2009.

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 above-mentioned decisions rendered in their respect. The Federal Constitutional Court reiterated that the constitutionally guaranteed right to freedom of religion in conjunction with the right of parents to care for and educate their children comprised the parents' right to impart their religious and moral beliefs to their children and protect them from diverging opinions. However, the Constitution also called on the State to provide school education, a mandate that was implemented by means of compulsory schooling, which therefore constituted an admissible restriction of the parents' right to educate their children. 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. The State had to refrain from measures aiming at systematic manipulation in respect of specific political or ideological concepts and from identifying itself with a particular belief or ideology in order not to jeopardise religious peace in society.

The Federal Constitutional Court found that the decisions of the domestic courts in the case at hand had complied with these principles. The District Court had correctly assessed that the school theatre workshop, raising the children's awareness of possible sexual abuse and presenting ways of preventing it, had not infringed the school authorities' obligation of neutrality. The workshop would not have put into question the parents' sexual education based on their religious convictions, as the children would not have been influenced to approve of or reject specific sexual behaviour.

The applicants' allegations that the theatre workshop promoted "free sexuality" for children or constituted grooming of the children for paedophilia had neither been supported by the facts as established by the lower courts nor by the content of the teaching materials used for the theatre workshop. In the light of these considerations, there was nothing to establish that the lower courts had misjudged the scope of the parents' right to freedom of religion and to educate their children according to their religious and moral beliefs.

The Federal Constitutional Court further held that the District Court's finding that the "*Lütke Fastnacht*" carnival event had not infringed the State's obligation of neutrality was unobjectionable, taking into account that the event had not been connected with religious acts and that the children had been under no obligation to dress up or wear costumes or actively participate in the celebrations. The same was true for the District Court's finding that the applicants' right to freedom of religion and their right to educate their children had not required that the school authorities prevent the applicants' children from witnessing the other pupils' carnival celebrations. Such tension between the religious convictions of a minority and the conflicting traditions of the majority resulting from school attendance were acceptable as a matter of principle. This was even more obvious where, as in the case at hand, the school authorities had attempted to strike a balance between the parents' constitutional rights and the State's mandate to provide education by offering alternative events.

By a decision of the same date, the Federal Constitutional Court also refused to admit a constitutional complaint lodged by Artur and Anna Wiens without providing reasons. The decisions were not posted to the claimants before 5 August 2009.

In view of the Federal Constitutional Court's decisions with respect to their relatives, Heinrich and Irene Wiens refrained from lodging a constitutional complaint.

(b) Subsequent developments

It appears that on subsequent occasions in following school terms, the three Wiens couples continued to prevent those of their children who were subject to one or the other of the aforementioned compulsory sexual education modules or school events from attending them. The parents were subject to ever increasing fines, which they deemed to be unlawful and refused to pay. As attempts by the domestic authorities to enforce payment were to no avail, the parents were each sentenced to imprisonment in lieu of payment for up to forty-three days.

For instance, by separate decisions of the Paderborn District Court of 11 March 2009, Eduard Wiens was sentenced to a fine of EUR 1,090 and Artur Wiens to a fine of EUR 450 for not sending several of their children to compulsory school events on repeated occasions. Following fruitless

attempts to enforce payment of such fines, an application by the public prosecutor to impose a prison sentence of forty days with respect to Eduard Wiens and thirty days with respect to Artur Wiens was granted by separate decisions of the Paderborn District Court on 1 March 2010.

Eduard Wiens's subsequent appeal was dismissed by a decision of the Paderborn Regional Court on 13 April 2010. The court held that the applicant's imprisonment had been lawful and had not been disproportionate. It emphasised that the applicant had initially been fined and that imprisonment had not been a sanction for the administrative offence on which the fine had been based but solely a means to enforce the applicant's payment obligation. The question of whether the imposition of the underlying fine had been lawful was not the subject of the proceedings regarding the prison sentence. The Regional Court further held that the length of the sentence imposed had been in line with the District Court's practice and had thus been proportionate.

By a decision of 14 April 2010 the Regional Court dismissed an appeal brought by Artur Wiens against the imprisonment order with similar reasoning. However, when comparing the length of the sentence imposed with previous sentences imposed by the District Court for unpaid fines (such as ten days for a fine of EUR 250 and forty days for a fine in the amount of EUR 1,090), the court found that the sentence of thirty days handed down to Mr Wiens had been excessive and reduced it to twenty days.

No further court decisions with respect to imprisonment orders relating to other members of the Wiens family were submitted to the Court. However, according to information submitted by the applicants' counsel, similar sentences were imposed on all of the parents. It appears that Heinrich Wiens served a prison sentence from 26 August to 6 October 2010 and that his wife Irene was sentenced by a decision of the Paderborn District Court on 2 July 2010 to a prison sentence of forty-three days for non-payment of a fine in the amount of EUR 1,090, service of which sentence commenced on an unknown date in February/March 2011. Her request for immediate release from prison lodged with the Court under Rule 39 of the Rules of Court on the grounds that, in particular, the length of her prison sentence had been disproportionate in breach of Article 5 of the Convention and had caused irreparable damage to her family life as protected by Article 8, was rejected by the President of the Fifth Section on 9 March 2011.

It further appears that similar prison sentences imposed on Anna Wiens and Rita Wiens were adjourned because of Anna Wiens being pregnant and Rita Wiens nursing a newborn child.

B. Relevant domestic law

Pursuant to Article 4 of the German Basic Law (*Grundgesetz*), freedom of religion shall be inviolable and its undisturbed practice shall be guaranteed.

While Article 6 (2) of the Basic Law acknowledges that the care and upbringing of children is the natural right of parents and a duty primarily incumbent upon them, its Article 7 stipulates that the entire school system shall be under the supervision of the state. Paragraph 4 of Article 7 guarantees, *inter alia*, the right to establish private schools. Private schools that serve as alternatives to state schools shall require the approval of the state and shall be subject to the laws of the *Länder*. Paragraph 5 states that private primary schools shall be approved only if the educational authority finds that the school serves a special educational interest or if, on the application of parents or guardians, it is to be established as a denominational or interdenominational school or as a school based on a particular philosophy and no state primary school of that type exists in the municipality.

Pursuant to section 33 of the Schools Act of the Federal *Land* of North Rhine-Westphalia (*Schulgesetz NRW*), sexual education in school complements sexual education by a child's parents. Its aim is to provide pupils with knowledge of biological, ethical, social and cultural aspects of sexuality according to their age and maturity in order to enable them to develop their own moral views and an independent approach towards their own sexuality. Sexual education should encourage tolerance between human beings irrespective of their sexual orientation and identity. Paragraph 2 of the said provision stipulates that parents have to be informed in due course of the purpose and content of school sexual education.

Primary schooling in Germany comprises the first to fourth year. Pursuant to the Schools Act and the Compulsory Schooling Act of the Federal *Land* of North Rhine-Westphalia (*Schulpflichtgesetz NRW*), compulsory primary schooling starts at the age of six and applies to all children having their residence in North Rhine-Westphalia. Children are obliged to regularly attend classes and all other mandatory school events and parents are responsible for ensuring regular attendance by their children. At the request of a child's parents, a school's principal may exempt pupils from certain classes or school events in the event that important reasons justify such exemption (sections 34(1), 35(1), 41(1) and 43 (1) and (3) of the Schools Act and sections 1(1), 3(1), 16(2), 17 and 20(1) and (2) of the Compulsory Schooling Act). Failure by the parents to ensure their children's attendance constitutes an administrative offence which may result in the imposition of a fine (section 126 of the Schools Act).

According to section 17 of the Administrative Offences Act, fines may range from EUR 5 to 1,000 depending on the nature of the offence. Section 20 of the said Act specifies that in the event of several fines each of them shall be determined separately. Pursuant to section 96 of the same Act, the competent court may order arrest to enforce the payment of a fine in the event that: (i) the amount has not been paid within two weeks following entry into force of the decision by which it was imposed; (ii) it has not been established that the debtor is unable to pay; and provided that (iii) the debtor has been informed of the possibility of his arrest. The duration of the arrest in lieu of payment may not exceed six weeks and in the event of several fines imposed by one decision it may not exceed a period of three months. An arrest may not be repeated in respect of the same fine.

COMPLAINTS

The applicants complained under Article 2 of Protocol 1 to the Convention, as well as Articles 9 and 8 of the Convention, that the domestic authorities' refusal to exempt their children from the aforementioned mandatory sex education classes, theatre workshop or carnival celebrations had constituted a disproportionate restriction of their right to educate their children in conformity with their religious convictions, as well as their children's right to receive an education corresponding to their own religious convictions, which, given their age, had corresponded to those of their parents.

Relying on Article 14 of the Convention taken in conjunction with each of Article 2 of Protocol 1, as well as with Articles 8 and 9, they argued that they had been discriminated against in relation to parents whose religious and moral convictions had not been offended by the said school events. The applicants Fröhlich further argued that children of Muslim parents had been granted exemptions from sexual education classes and the applicants Dojan maintained that Muslim parents who had prevented their children from attending sexual education classes had not been penalised.

THE LAW

1. Pursuant to Rule 42 § 1 of the Rules of the Court, the Court decides to join the applications given their similar factual and legal background.

2. The applicants primarily complained that compulsory attendance at the aforementioned sex education classes, theatre workshop "My body is mine" and "*Lütke Fastnacht*" carnival celebrations and the refusal of the domestic authorities, as confirmed by the German courts, to exempt their

children from participation in these school events had infringed Article 2 of Protocol No. 1 of the Convention, which reads as follows:

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

While the applicants claimed not to be opposed to sexual education in school as such, they alleged that compulsory attendance at the aforementioned events and lessons, which had exclusively promoted a liberal view of sexuality, had amounted to indoctrination of their children that had infringed their right to educate and raise them according to their own religious and philosophical convictions – a right that was also supported by the right to freedom of thought, conscience and religion guaranteed under Article 9, as well as the right to respect for family and private life under Article 8 of the Convention. The sexual education provided had not taken into account the Christian sexual ethics to which the applicant parents adhered and had not been adapted to the childrens' degree of maturity. The State had not constructed the lessons and events in an objective, critical and pluralistic manner and had not respected the parents' religious and philosophical convictions.

The applicants further argued that they had only sought to have their children exempted from specific school events to which they had been fundamentally opposed. The scope of the requested exemption had been limited and had not constituted a considerable disruption of the childrens' general education. The parents' decision to keep their children off school and/or prevent them from attending the said lessons and school events had constituted a minor violation of the education laws and it had thus not been foreseeable that they would trigger the disproportionate sanctions imposed on the applicant parents, as confirmed by the domestic courts.

The Court notes at the outset that the applicants Heinrich and Irene Wiens refrained from lodging a constitutional complaint against the decisions of the Paderborn District Court of 11 June 2008 and the Hamm Court of Appeal dated 16 July 2009, arguing that such complaint would have been futile in view of the Federal Constitutional Court's decisions of 21 July 2009 dismissing their relatives' constitutional complaints.

The Court reiterates that the rule of exhaustion of domestic remedies referred to in Article 35 of the Convention obliges those seeking to bring a case against the State before the Court to first use the effective remedies provided by the national legal system (see, among many other authorities, *Hartman v. the Czech Republic*, no. 53341/99, § 56, ECHR 2003-VIII). An applicant is excused from pursuing domestic remedies which are bound to fail, but has to show either by providing evidence of relevant court decisions or by presenting other suitable evidence that a remedy available to

him would in fact have been of no avail (see *Storck v. Germany* (dec.), no. 61603/00, 26 October 2004).

Assuming exhaustion with respect to all applicants, the Court refers to the main principles governing the general interpretation of Article 2 of Protocol No. 1 as set out in its case-law (see, in particular, *Kjeldsen, Busk Madsen and Pedersen v. Denmark*, 7 December 1976, §§ 50-54, pp. 24-28, Series A no. 23; *Folgerø and Others v. Norway* [GC], no. 15472/02, § 84, 29 June 2007; and *Hasan and Eylem Zengin v. Turkey*, no. 1448/04, §§ 47-55, ECHR 2007-XI). The two sentences of Article 2 of Protocol No. 1 must be read 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, § 52).

The right of parents to respect for their religious and philosophical convictions is grafted on to this fundamental right, and the first sentence does not distinguish, any more than the second, between State and private teaching. In short, the second sentence of Article 2 of Protocol No. 1 aims at safeguarding the possibility of pluralism in education, a possibility which 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, § 50).

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, § 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.

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*, § 52).

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 v. Greece*, 18 December 1996, § 28, *Reports of Judgments and Decisions* 1996-VI). In particular, the second sentence of Article 2 of Protocol No. 1 does not prevent the States from disseminating in State schools, by means of the teaching given, objective information 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, § 53). In fact, it seems very difficult for many subjects taught at school not to have, to a greater or lesser extent, some philosophical complexion or implications. The same is true of religious affinities if one observes the existence of religions forming a very broad dogmatic and moral belief system which has or may have answers to every question of a philosophical, cosmological or moral nature (*ibid*, § 53).

The second sentence of Article 2 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 (see *Folgerø and Others*, cited above, § 84).

Such an interpretation of the second sentence of Article 2 of Protocol No. 1 is consistent with the first sentence of the same provision, with Articles 8 to 10 of the Convention and with the general spirit of the Convention itself, an instrument designed to maintain and promote the ideals and values of a democratic society (see *Kjeldsen, Busk Madsen and Pedersen*, cited above, § 53). This is particularly true in that teaching is an integral part of the process whereby a school seeks to achieve the object for which it was established, including the development and moulding of the character and mental abilities of its pupils as well as their personal independence *(*see *Hasan and Eylem Zengin*, cited above, § 55).

The Court recalls that it has already examined the German system imposing compulsory elementary school attendance while excluding home education in general. It has found it established that the State, in introducing such a system, had aimed at ensuring the integration of children into society with a view to avoiding the emergence of parallel societies, considerations that were in line with the Court's own case-law on the importance of pluralism for democracy and which fell within the Contracting States' margin of appreciation in setting up and interpreting rules for their education systems (see *Konrad and Others v. Germany* (dec.), no. 35504/03, 11 September 2006).

The Court finds that similar considerations apply in the case at hand, where the applicants do not seek a general exemption from compulsory schooling with a view to educating their children at home but rather request exemption from specific sex education classes or school events which they deem to conflict with their religious convictions.

The Court observes that the sex education classes at issue aimed at, as stated by the Paderborn District Court, the neutral transmission of knowledge regarding procreation, contraception, pregnancy and child birth in accordance with the underlying legal provisions and the ensuing guidelines and the curriculum, which were based on current scientific and educational standards. The goal of the theatre workshop "My body is mine"

was to raise awareness of sexual violence and abuse of children with a view to its prevention.

The Court refers in this context to section 33 of the North Rhine-Westphalia Schools Act stipulating that the aim of sexual education is to provide pupils with knowledge of biological, ethical, social and cultural aspects of sexuality according to their age and maturity in order to enable them to develop their own moral views and an independent approach towards their own sexuality. Sexual education should encourage tolerance between human beings irrespective of their sexual orientation and identity. This objective is also reflected in the decisions of the German courts in the case at hand, which have found in their carefully reasoned decisions that sex education for the concerned age group was necessary with a view to enabling children to deal critically with influences from society instead of avoiding them and was aimed at educating responsible and emancipated citizens capable of participating in the democratic processes of a pluralistic society – in particular, with a view to integrating minorities and avoiding the formation of religiously or ideologically motivated "parallel societies".

The Court finds that these objectives are consonant with the principles of pluralism and objectivity embodied in Article 2 of Protocol No. 1.

As regards the carnival celebrations at issue, the Court notes that these were not accompanied by any religious activities and that in any event the children had the possibility of attending alternative events. As pointed out by the German courts, the opportunity to attend such alternative activities constituted an attempt by the school management to accommodate the moral and religious convictions of the several children and their parents belonging to the Christian Evangelical Baptist community to the extent possible but also with a view to guaranteeing the proper functioning of the school system.

The Court finds that the presumptions underlying the decisions of the domestic authorities and courts are not erroneous and fall within the Contracting States' margin of appreciation in setting up and interpreting rules for their education systems. It further notes that there is nothing to establish that the information or knowledge included in the curriculum and imparted within the scope of the said events was not conveyed in an objective, critical and pluralistic manner. In this respect the Court shares the view of the domestic courts, which concluded that there was no indication that the education provided had put into question the parents' sexual education of their children based on their religious convictions or that the children had been influenced to approve of or reject specific sexual behaviour contrary to their parents' religious and philosophical convictions. Neither did the school authorities manifest a preference for a particular religion or belief (*Hasan and Eylem Zengin*, cited above, § 59) within the scope of the school activities at issue. The Court reiterates in this context that the Convention does not guarantee the right not to be confronted with

opinions that are opposed to one's own convictions (see *Appel-Irrgang and Others v. Germany* (dec.), no. 45216/07, 6 October 2009).

Moreover, as also pointed out by the German courts, the applicant parents were free to educate their children after school and at weekends and thus their right to educate their children in conformity with their religious convictions was not restricted in a disproportionate manner. Compulsory primary-school attendance did not deprive the applicant parents of their right to "exercise with regard to their children natural parental functions as educators, or to guide their children on a path in line with the parents' own religious or philosophical convictions" (see, *mutatis mutandis, Kjeldsen, Busk Madsen and Pedersen*, cited above, § 54).

In the light of the above considerations, the Court considers that, in refusing exemption from the compulsory sex education classes, theatre workshop and carnival celebrations, the national authorities have not overstepped the margin of appreciation accorded to them within the scope of Article 2 of Protocol No. 1.

Finally, the Court is satisfied that the means employed by the domestic authorities and courts with a view to compelling the applicants to ensure regular attendance by their children at compulsory school events have not been disproportionate. Pursuant to section 126 of the Schools Act (see Relevant Domestic Law above), failure by parents to ensure such attendance constitutes an administrative offence that may result in the imposition of a fine. There is nothing to establish that the amounts of the fines imposed were excessive or determined in an arbitrary manner. As regards the prison sentences imposed on the Wiens parents for failure to pay such fines, the Court – notwithstanding the question of whether domestic remedies have been exhausted in this respect – refers to the decision of the Paderborn Regional Court of 13 April 2010 and observes that imprisonment does not constitute a sanction for the administrative offence on which the initial fine had been based but is solely a means to enforce the applicants' payment obligation. The prison sentences in lieu of payment were imposed in accordance with the relevant provisions of the Administrative Offences Act while having regard to the amount of the fines imposed and the circumstances of the individual case.

It follows that this complaint must be rejected as manifestly ill-founded, in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

3. The applicants also complained that the refusal to allow the applicant parents to educate their children in accordance with their religious beliefs amounted to a violation of the applicants' respect for their private life under Article 8 of the Convention, which provides:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

Moreover, the applicants complained of a violation of their freedom of thought, conscience and religion, as guaranteed by Article 9 of the Convention, which provides:

> "1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.
>
> 2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others."

The Court finds that any interference with the applicants' rights under either of these provisions would, for the reasons stated above, be justified under Article 8 § 2 and Article 9 § 2 respectively as being provided for by law and necessary in a democratic society in view of the public interest in ensuring the children's education. The Court notes, in particular, that there is nothing to establish that, when including the school events at issue in the school's education programme, the school conference did not act within the limits of its competences accorded by the Schools Act.

Therefore, this part of the application is likewise manifestly ill-founded in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

4. The applicants further complained of a violation of Article 14 of the Convention taken in conjunction with each of Article 2 of Protocol No. 1, Article 8 and Article 9. Article 14 provides:

> "The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

They submitted that they had been discriminated against in relation to others who held different religious convictions which did not conflict with the compulsory sex education classes and school events at issue. Having regard to its conclusions concerning Article 2 of Protocol No. 1, as well as Articles 8 and 9, the Court finds that no separate issue arises in conjunction with Article 14 in this respect.

In addition, the Fröhlich family submitted that they had been being discriminated against in relation to Muslim families whose children had

been exempted from compulsory sexual education lessons on the grounds of their religious beliefs and the Dojan family submitted that Muslim parents who had prevented their children from attending such lessons had not been fined by the school authorities.

It appears that these allegations have not been the subject of the proceedings before the national courts and thus domestic remedies have not been exhausted in this respect. Even assuming the exhaustion of domestic remedies, the Court notes that the Dojan and Fröhlich families have not further substantiated this argument or provided any factual evidence in its support.

It follows that this complaint must also be rejected as manifestly ill-founded in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court unanimously

Decides to join the applications;

Declares the applications inadmissible.

Claudia Westerdiek
Registrar

Dean Spielmann
President

APPENDIX

List of applications

	Application no.	Names of applicants
1.	319/08	Willi, Anna and David DOJAN
2.	2455/08	Theodor, Lydia and Elly FRÖHLICH
3.	7908/10	Artur and Anna WIENS
4.	8152/10	Eduard and Rita WIENS
5.	8155/10	Heinrich and Irene WIENS