

I. THE PARTIES

A. THE APPLICANT

(Fill the following details of the applicant and the representative, if any)

1. Surname: Dojan
Male

2. First name: Willi

3. Nationality: German

4. Occupation: Locksmith

5. Date and Place of Birth: 11. 01. 1960 Atasu, Kazakhstan

1. Surname: Dojan
Female

2. First name: Anna

3. Nationality: German

4. Occupation: Housewife

5. Date and Place of Birth: 10. 12. 1972 Duschanbe, Tajikistan

6. Permanent Address: Schlehenweg 20, 33154 Salzkotten, Germany

7. Tel. N°: +49(0)5258/4525

8. Present Address: Schlehenweg 20, 33154 Salzkotten, Germany

9. Name of Representative: Roger Kiska

10. Occupation of Representative¹: Lawyer

11. Address of Representative: 46 Kosicka Ul, 82108 Bratislava, Slovak Republic

12. Tel. N°: +421(0)918427157

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B. THE HIGH CONTRACTING PARTY

(Fill in the name of the State(s) against which the application is directed)

13. Federal Republic of Germany

¹ If the applicant appoints a representative, attach a form of authority signed by the applicant and her representative.

II. STATEMENT OF THE FACTS

(See § 19(b) of the Notes)

14. The applicants, Willi and Anna Dojan, are married and have 8 children between the ages of 2 and 23. This application concerns their daughter Lilli, born 07. 04. 1997. The family are active members of the Christian Evangelical Baptist Church [ECHB] and hold strong moral beliefs regarding sexual activity as part of their religious faith; these moral teachings being founded in Biblical tradition and which are a staple of mainstream Christian moral theology.

The applicants objected to their daughter Lilli's attendance both at a mandatory stage play and for four school days of "sexual education." In June 2006, the stage play, "Mein Körper gehört mir" [My body is mine], was determined by the school authority of the Liboriussschule in Salzkotten to be a mandatory school event for all pupils attending 3rd and 4th classes. The object of the theatre project is the discussion of sexual abuse of children for the purpose of establishing preventative measures for such abuse. The production is interactive. The play, as well as the "sexual education" lessons, however also promote a liberal view of sex and sexuality which strongly contradict the beliefs of the applicant parents.

The Dojans therefore refused to let their daughter take part in either the theatre event or the "sexual education" lessons which occurred in February 2007. In making the decision, they were of the conviction that they had acted within the realm of their parental responsibility and in accordance with the parental rights (taken in conjunction with their freedom of religion) afforded to them by Articles 4 and 6 of the GG (Grundgesetz, German basic law), Protocol 1, Article 2 of the European Convention of Human Rights and various other international treaties to which Germany is a party. The parents, in making their decision, regarded the theatre project as morally harmful, injuring their ability to instill in their child the Christian ethics which they so strongly adhere to. They also believed that the play and lessons ultimately sexualized their daughter. While the parents do not have a moral opposition to "sexual education" being taught in school, they were however opposed to this particular curriculum of teaching as being harmful to Lilli's moral development.

The parents, being convinced that they were within their legal and moral rights to protect their daughter against sexual abuse, removed Lilli from the offending theatre production and accompanying lessons, instead opting to educate her in the principles of chastity. The Applicants contend that they can much better educate their daughter by themselves than can the theatre production and lessons through traditional methods of teaching and also taking care to watch who their children have contact with and keeping them away from immoral presentations. Attendance to the theatre presentation and "sexual education" lessons were not only opposed to their faith, but in the opinion of the Dojans so did damage to their ability to raise their daughter according to their faith that it obliterated their rights under Protocol 1, Article 2.

In keeping their child from attending the theatre production and lessons, the applicants were convicted by the Amtsgericht Paderborn (lower court), for which each of them was fined 120 € for a regulatory offence by sentence of 27 May 2008 (23 OWi 361/ 008-316/08). In its judgment the court cited a twofold willful offence against § 41 para 1 clause 2; § 226 para 1 Nr. 4

SchulG.NW (Schulgesetz Nordrhein-Westfalen); § 17 OWiG (Ordnungswidrigkeitengesetz). The applicants argued in their defense that no scientific proof existed that the programs provided abuse prevention but to the contrary taught the children to become sexually active by instilling in them that they are to observe their inner feelings on sexuality. Precisely stated, the content of the programme ultimately taught the principle that if something feels good sexually, than it is acceptable practice.

On 03 June 2008, the Dojans lodged an appeal on points of law to the Amtsgericht Paderborn, which was rejected by the Oberlandesgericht Hamm (OLG Hamm, upper court) by the decision of 28 August 2008. The appeal to the Bundesverfassungsgericht (BVerfG, constitutional court) was thereafter rejected by resolution of 15 Nov, 2008 (Nichtannahmebeschluss) The object of this application is to object to the punitive measures applied by the court in convicting the applicants and to establish that such opt-outs of “sexual education” programmes are in line with Protocol 1, Article 2 taken alone or in conjunction with Article 9.

III. STATEMENT OF ALLEGED VIOLATION(S) OF THE CONVENTION AND/OR PROTOCOLS AND OF RELEVANT ARGUMENTS

(See §19(c) of the Notes)

15. The Applicants complain primarily of violations of Protocol 1, Article 2 of the Convention as relates to the guarantee that parents be allowed to educate their children according to their own religious and philosophical convictions. This right is bolstered by both Article 9 and the guarantee of freedom of thought, conscience and religion as well as Article 8 and its incorporation of the best interests of the child standard. For this Court to rule that there exists no right to opt-out of “sexual education” classes which severely restrict the ability of the Applicant parents to raise Lilli according to their faith would create an inconsistency of application of Convention law in light of the Grand Chamber decision in *Case of Folgero and Others v. Norway*, Application No. 15472/02, judgment of 29 June 2007.

Protocol 1, Article 2 does not allow 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.² 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”.³

Folgero stands for two principles which apply as equally to this application as they do to religious education. First, as the Court held, “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.”⁴ Second and equally pertinent, that “democracy does not simply mean that

² ECHR, *Kjeldsen, Busk Madsen and Pederson v. Denmark*, Judgment of 7 December 1976, Application No. 5095/71, 5920/72, 5926/72, § 52. See also: *Case of Folgero and Others v. Norway*, cited above, § 84(c).

³ *Case of Folgero and Others v. Norway* cited above, § 84(c).

⁴ *Id.*, § 84(e).

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.”⁵

The failure of the German authorities to make reasonable accommodations in allowing Applicants to educate their daughter at home on this very sensitive subject violates the substance of the *Folgero* ruling and subordinates religious freedoms to other Articles of the Convention. In its essence, the punishment of the Dojans under the compulsory schooling laws creates an unnecessary clash of Convention rights founded upon the State overstepping its supervisory authorities. It must be reiterated that the Dojans are not opposed to the teaching of “sexual education” as part of the greater curriculum of health education. However, they are of the conviction, which is supported both by *Folgero* and the numerous international treaty provisions set out at the end of Section III of this application, that due to the intimate moral issues involved that parents must be able to have sufficient say in their children’s education that it not interfere with the substance of their parental rights guaranteed under Protocol 1, Article 2 of the Convention. Whereas *Folgero* offered an opt-out of an entire class, the Dojans simply sought an opt-out of several days of schooling to which they were fundamentally opposed. Their ability and desire to teach Lilli at home on these issues, coupled with the fact that she still received education on the matter as part of the greater health curriculum dictates that the fine levied by the German authorities was not necessary in a democratic society.

For the state to lawfully restrict Convention freedoms under the European Convention of Human Rights, it must meet three criteria: (a) that the interference must be prescribed by law; (b) that the interference must have a legitimate aim; and (c) that the interference must be necessary in a democratic society. Generally speaking, the interference in question must be the act of a state⁶; however, the European Court of Human Rights has held that any *inter partes* intervention by a court constitutes interference if this intervention challenges a *de facto* situation safeguarded by the Convention⁷ or if it gives effect to law that conflicts with prevailing European Convention law⁸. As such, the fining of the Applicants triggers the protections of the Convention organs.

(A) Prescribed By Law:

In order to be prescribed by law, the law in question must be accessible and foreseeable in its effects. It thus cannot suffer from vagueness; that the “quality” of the law must clearly and precisely define the conditions and forms of any limitations on basic Convention safeguards and must be free from any arbitrary application.⁹

The Court, in Metropolitan Church of Bessarabia held that domestic law, to meet the clarity requirement, must afford a measure of legal protection against arbitrary interferences by public authorities with the rights guaranteed by the Convention: “in matters affecting

⁵ *Id.*, § 84(f).

⁶ ECtHR, 23 November 1993, *A v. France*, Series A, No. 277-B, § 36.

⁷ ECtHR, 23 June 1993, *Hoffman v. Austria*, Series A, No. 255-C: JDI, 1994, p. 778, § 29.

⁸ ECtHR, 20 April 1993, *Sibson v. the United Kingdom*, Series A, No. 258-A, § 27.

⁹ See: ECtHR, 26 April 1979, *Sunday Times v. the United Kingdom*, Series A, No. 30 § 49 *et seq*; ECtHR, 24 March 1998, *Olsson v. Sweden*, Series A, No. 130 § 61f; *Kruslin v. France*, *op. cit.*, § 36. Also *cf.* ECtHR, 22 November 1995, *SW v. the United Kingdom*, Series A, No. 335-B, § 36, on how the development of criminal law by the courts should be reasonably foreseen.

fundamental rights it would be contrary to the rule of law- one of the basic principles of a democratic society enshrined in the Convention- for a legal discretion granted to the executive to be expressed in terms of an unfettered power; consequently the law must indicate with sufficient clarity the scope of any such discretion and the manner of its exercise.”¹⁰

Here, applicants contend that the punitive scope of the law far exceeds the foreseeability requirements set out by Convention case law as no proportionality exists as to the act of opting out of “sexual education” courses and the punitive response of the German government. Furthermore, where parents have the ability to better equip their children than the State on the issue of sexual mores, then it strains credulity that the State would not only impede this right but willfully contradict it. 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.¹¹ The opt-out sought in the instant application does not differ at all in the quality of the reasonableness of the request with that in *Folgero*. At the same time, the breadth of the opt-out, being only four days as opposed to an entire class, makes the instant application much less disruptive to the child's general education than did *Folgero*. Finally, whereas in *Folgero*, where we are speaking of the excision of an entire subject in a student's educational curriculum, in the instant matter we are dealing with only a fractional component of the health education of Lilli Dojan. Based on the *de minimus* interruption, both as relates to content and quantity of classroom time lost (time compensated by in home education by Willi and Anna Dojan), and the fundamental nature of the rights which the Dojans were exercising in removing their daughter from the theatre production and accompanying classes, it is clear that the compulsory school law under which the applicants were convicted lacks the requisite foreseeability to be prescribed by law and therefore is violative of the Convention.

(B) Legitimate Aim:

The second prong of the analysis of interference is whether the interference in question pursues a legitimate aim. Restrictions on rights guaranteed by the European Convention of Human Rights must be narrowly tailored, must be adopted in the interests of public and social life as well as the rights of other people within society.¹²

While the German authorities may argue that a legitimate aim is being pursued in regulating mandatory school attendance, both for public order and the protection of health and morals, the reality of the argument is far less convincing. The nature and scope of the current curriculum of German education and the hostile environment for children within the German school system fails to promote the proper pluralism and broadmindedness that are demanded by Convention law; and nor does the German system take into account the best interests of the child with regard to promoting gifts and working on pedagogical deficiencies. Further, the State usurps the educative role of parents by supplanting its judgment as to the indoctrination of German

¹⁰ ECtHR, 13 December 2001, *Metropolitan Church of Bessarabia and Others v. Moldova*, Reports 2001-XII, § 109: JDI 2002, p. 313.

¹¹ *Kjeldsen, Busk Madsen and Pederson v. Denmark*, cited above, § 54.

¹² See: F. Sudre, *Droit International et Europeen des droits de l'homme*, PUF, Droit fundamental, 1999, p. 108.

children while at the same time punishing parents who take any initiative to raise their children according to their own religious or philosophical beliefs. In a pluralist democratic society, the State's duty of impartiality and neutrality towards various religions, faiths and beliefs is incompatible with any assessment by the State of the legitimacy of religious beliefs or the ways in which those beliefs are expressed.¹³ However, the manner in which compulsory “sexual education” is taught in Germany, with no options provided to parents on how to best educate their children on such a morally sensitive issue, breaches this duty of neutrality and overtly makes the judgment that the State’s values are superior to the religious tenants of the people of Germany.

Furthermore, the Dojans argue that a key element of the conviction against them stems from their religious and moral beliefs and thus was steeped in discriminatory intent. If the German courts are allowed to depart from the principles established in *Folgero* then a hierarchy of rights would be created subjugating the right to hold and instill religious beliefs to one’s children to the right of parents who wish not to have their children taught religious education. Precisely stated, the inconsistent application of opt-outs for different classes dealing with intimate moral and religious questions would create a preferential right for parents to have their children taught not to hold religious beliefs as opposed to the right of parents to teach their children to adhere to the religious beliefs they wish to instill in them. Such a distinction would create a *de facto* discriminatory application of Convention law against the right to hold religious convictions.

(C) Necessary in a Democratic Society:

The final criterion that must be met for government interference into Convention protections to be legitimate is that the interference in question must be necessary in a democratic society. The European institutions have stated that the typical features of a democratic society are pluralism, tolerance and broadmindedness.¹⁴ For such an interference to be necessary in a democratic society it must meet a pressing social need whilst at the same time remaining proportionate to the legitimate aim pursued.¹⁵ While the term necessary has not been deemed to be synonymous with “indispensable”...neither has it the flexibility of such expressions as “admissible”, “ordinary”, “useful”, “reasonable” or “desirable”.¹⁶

Implicit in both Article 8 and Protocol 1, Article 2, it is stressed, that the rule of law in a democratic society be given paramount importance and that there be freedom from arbitrary interference with Convention rights. To this extent, the Court has relied on striking a balance between the rights of the individual and the public interest, through the application of the principle of proportionality.¹⁷

¹³ *Manoussakis and Others v. Greece*, judgment of 26 September 1996, *Reports* 1996-IV, p. 1365, § 47, and *Hasan and Chaush v. Bulgaria* [GC], no. 30985/96, § 78, ECHR 2000-XI.

¹⁴ ECtHR, 30 September 1976, *Handyside v. the United Kingdom*, Series A, No. 24, § 49 *et seq.*

¹⁵ *Sunday Times v. the United Kingdom*, *op. cit.*, § 63 *et seq.*

¹⁶ *Handyside v. the United Kingdom*, 5493/72 [1976] ECHR 5 (7 December 1976).

¹⁷ See e.g. *Dudgeon*, *op. cit.*, para. 53; *Handyside v. the United Kingdom*, 5493/72 [1976], ECHR 5 (7 December 1976), para. 49; *Young, James and Webster v. the United Kingdom*, 7601/76; 7806/77 [1981] ECHR 4 (13 August 1981), para. 63.

The Court has frequently stated that: “inherent in the whole Convention is a search for a fair balance between the demands of the general interest of the community and the requirements of the protection of the individual’s fundamental rights.”¹⁸ In its balancing of the rights of the individual and the interests of the State, the Court refrains from substituting its opinion on the merits of an individual case over the judgments of a national court. Nonetheless, its role is, when a case is taken as a whole, to decide whether the authorities had “relevant and **sufficient** reasons” for taking the contentious measures.¹⁹

The state has a duty to remain impartial and neutral, since what is at stake is the preservation of pluralism and the proper functioning of democracy, even when the state or judiciary may find some of those views irksome.²⁰

Article 2 of the First Protocol specifies that the state shall respect the right of parents to ensure education and teaching in conformity with their own philosophical convictions. The European Court of Human Rights has defined the difference between education and teaching thus: “The education of children is the whole process whereby, in any society, adults endeavor to transmit their beliefs, culture and other values to the young, whereas teaching or instruction refers in particular to the transmission of knowledge and to intellectual development.”²¹ The scope of the second sentence of Protocol 1, Article 2 is broad and encompasses all methods of knowledge transmission and every type of educational structure including, moreover, those outside the school system.²² The rights of parents to educate their children according to their own philosophical beliefs and desires as to what may be in their child’s best interest must be safeguarded in order to provide the possibility of pluralism in education, this being essential for the preservation of a democratic society. Pluralism in education would be illusory if it only referred to an identical set of ideas being presented to children. This is particularly true when all other ideas are being stifled by rigorous rules impeding the ability of parent’s to instill differing moral and philosophical principles in their children. True pluralism is tolerant and respects the full spectrum of ideas represented when freedom of religion, freedom of education, freedom of expression and freedom of conscience are allowed to operate unobstructed except in those rare circumstances where restrictions necessary in a democratic society are required. The instant application does not represent one of those instances. The punishment of an opt-out of four days of education, being supplemented by the parent’s own education on the matter as relates to highly sensitive moral issues, cannot be viewed as being necessary in a democratic society. To accept such a position would render the protection of parental rights afforded in the last clause of Protocol 1, Article 2 as meaningless.

The term philosophical convictions must be interpreted by the Convention as a whole; those convictions being worthy of respect in a democratic society which they are not

¹⁸ *Soering v. the United Kingdom*, 14038/88 [1989] ECHR 14 (7 July 1989).

¹⁹ *Olsson v. Sweden*, *op. cit.*

²⁰ ECtHR, 30 January 1998, *United Communist Party of Turkey and Others v. Turkey*, Reports 1998-I, p. 25, § 57.

²¹ ECtHR, *Campbell and Cosans v. The United Kingdom*, Judgment of 25 February 1982, Series A No. 48, 4 EHRR 293, § 33.

²² P.-M Dupuy and L. Boisson de Charzounes, “Article 2”, in L.E. Pettiti, E. Decaux and P.H. Imbert (eds.), *La Convention europeenne des Droites de l’Homme*, Economica, 2nd ed., 1999, p. 999.

incompatible with human dignity.²³ Applicants here contend that philosophical beliefs should be extended to include pedagogical beliefs; those being the parents' beliefs as to the best way of educating their children. This is particularly paramount in Germany where the educational system has proven itself to be deficient both academically and socially.

The Court has held that the freedom to choose by parents the means of their child's education is a necessity. This interest must also be balanced against what is in the best interests of the child.²⁴ Respecting this mandate of Article 2 of the First Protocol by considering the best interests of the child will not lead to unrestrained freedom of choice in education.

The Court has held that the State must strike an appropriate balance between parental rights with raising their children according to their religious and philosophical convictions while at the same time ensuring that objective sexual health information is provided to students:

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.²⁵

Applicants contend that the State has failed to meet this burden and has pursued a programme of indoctrination which makes it impossible for them to fully enjoy the rights promised under Protocol 1, Article 2. Applicants further contend that they are better placed than the State to provide objective moral teaching on sex and sexuality and that the German authorities in levying its punishment upon them provided no empirical evidence as to the objective or efficacious nature of the programme being mandatorily taught. Additionally, the applicants argue that an opt-out of four days of education on a given subject is *de minimus*, particularly in light of their desire to home educate their daughter on the issue, and that it represents but a fraction of the general health education curriculum to which they have no opposition of Lilli being exposed to.

This Court has held that primary education and teaching for children is undertaken by the parents, making respect for their philosophical and religious beliefs all the more paramount. The Court further holds that this respect afforded to parents under the right to education is bolstered by, while the duty of the State to educate is tempered by, the right to respect for private and family life (Article 8), the right to freedom of thought, conscience and religion (Article 9) and the freedom to receive and impart information (Article 10).²⁶ An agenda based curriculum focusing on a liberalized approach to "sexual health" would serve only to undermine this right to parental respect guaranteed by the second sentence of Protocol 1, Article 2. The current "sexual

²³ ECtHR, 25 February 1982, *Campbell and Cosans v. the United Kingdom*, Series A, No. 48, § 36: CDE, 1986, p. 230.

²⁴ ECmHR, 8 September 1993, *Bernard v. Luxembourg*, 75 DR 57.

²⁵ ECHR, *Kjeldsen, Busk Madsen and Pederson v. Denmark*, Judgment of 7 December 1976, Application No. 5095/71, 5920/72, 5926/72, § 53.

²⁶ *Id.*, § 52.

education” curriculum being taught in Germany from which Applicants’ sought to opt-out of seeks to indoctrinate students and promotes a sexual lifestyle which both is offensive to the Applicant parents and undermines their ability to impart their own sexual mores and sexual and reproductive teachings to their children, a right guaranteed to them by the Convention.²⁷ In weighing the fundamental nature of the parental rights protected by Protocol 1, Article 2 against the interests of the state in ensuring compulsory education in the *de minimus* instance of four days worth of “sexual education” lessons, it is clear that the German courts overstepped their authority and that the fines in question were not necessary in a democratic society.

Complimentary International Law:

Numerous international documents confirm parents as primary and principal educators of their children. By that fact alone, parents have the greatest rights and the greatest responsibility in the education of their children. State institutions should assist them in this task; schools must seek the cooperation of parents and should not in any case artificially displace the rights of children and the rights of parents by imposing on the children an education contrary to the one they receive from their parents.

Universal Declaration of Human Rights:

Article 26 (3): Parents have a prior right to choose the kind of education that shall be given to their children.

Convention on the Rights of the Child:

The Convention on the Rights of the Child clearly states that among the most important rights of the child, besides the right to life, are precisely the right to parental love and the right to education.

The Convention clearly states that the rights of parents are not juxtaposed to the rights of children. Moreover, the parents, being the ones who love their children most, are those most called upon to decide on the education of their children. The pertinent excerpts of the Convention, to which Germany is party, read thus:

Article 3 (2): States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.

Article 5: **States Parties shall respect the responsibilities, rights and duties of parents** or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, **to provide, in a manner consistent with the evolving**

²⁷ *Id.*, 54.

capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention. [Emphasis added]

Article 14: 1. States Parties shall respect the right of the child to freedom of thought, conscience and religion.

2. **States Parties shall respect the rights and duties of the parents** and, when applicable, legal guardians, **to provide direction to the child** in the exercise of his or her right in a manner consistent with the evolving capacities of the child. [Emphasis added]

Article 18: 1. States Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. **Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child.** The best interests of the child will be their basic concern.

2. For the purpose of guaranteeing and promoting the rights set forth in the present Convention, **States Parties shall render appropriate assistance to parents and legal guardians** in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children. [Emphasis added]

Article 29 (1): States Parties agree that the education of the child shall be directed to: ...

c) The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own...

Equally pertinent, the *International Covenant on Civil and Political Rights* (ICCPR), to which Germany is a signatory states:

Article 18 (4): The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

Convention against Discrimination in Education:

Article 5 (1): The States Parties to this Convention agree that:

(b) It is essential to respect the liberty of parents and, where applicable, of legal guardians, firstly to choose for their children institutions other than those maintained by the public authorities but conforming to such minimum educational standards as may be laid down or approved by the competent authorities and, secondly, to ensure in a manner consistent with the procedures followed in the State for the application of its legislation, the religious and moral education of the children in conformity with their own convictions; and no person or group of

persons should be compelled to receive religious instruction inconsistent with his or their conviction.

Undoubtedly therefore, in light of the above enumerated international convention and treaty provisions when taken in conjunction with the protections afforded by the Convention and the decision in *Folgero*, parents must be at the centre of the decision making process when it comes to curricula which deeply affect the value system of the child. The school systems should therefore work on harmonizing institutional education with parental upbringing. In doing that, the principle of plurality should be respected and children and parents should be given a choice between several programmes including home education, in order to make the abovementioned harmonization as successful as possible. Schools as state institutions must give adequate assistance to parents and legal guardians in order to achieve a high level of performance of educational activities and fulfillment of all their obligations towards the child, as stated clearly in Art. 18 of the Convention on the Right of the Child, while never assuming to have the right to impose any education contrary to the wishes of the parent or unbeknownst to the parent. The school should under no circumstances re-educate the child but should defer to the parents, strengthen their role as parents and treat them as partners, not exclude them under the presupposition that the state or an international organ be better suited to the task. This approach would be entirely contrary to the above enumerated international norms as well as the European Convention of Human Rights, which are replete with clear statements that the rights of parents should be respected and that the parents must receive assistance and cooperation in the education and upbringing for the benefit of children.

IV. STATEMENT RELATIVE TO ARTICLE 35 § 1 OF THE CONVENTION

(See §19(d) of the Notes. If necessary, give the details mentioned below under points 16 to 18 on a separate sheet for each separate complaint)

16. Final decision (date, court or authority and nature of the decision)

15 November 2009; Bundesverfassungsgericht (Constitutional Court); Decision of Constitutional Court denying Dojan appeal from Oberlandesgericht Hamm (OLG Hamm, upper court).

17. Other decisions (list in chronological order, giving date, court or authority and nature of decision for each of them).

27 May 2008 (23 OWi 361/008 - 316/08); Amtsgericht Paderborn (lower court); conviction for a willful offence against § 41 para 1 clause 2; § 226 para 1 Nr. 4 SchulG.NW (Schulgesetz Norgrhein-Westfalen); § 17 OWiG (Ordnungswidrigkeitengesetz).

28 August 2008; Oberlandesgericht Hamm (OLG Hamm, upper court); appeal on points of law rejected by the appeals court.

19. Is there or was there any other appeal or other remedy available to you which you have not used? If so, explain why you have not used it.

All domestic remedies were exhausted. No other remedy or possibility of appeal is available to Applicants.

Statement of the Object of the Application

(See §19(e) of the Notes)

19. Applicants seek just satisfaction, pecuniary and non-pecuniary damages, and costs as relates to their conviction and fine under § 41 para 1 clause 2; § 226 para 1 Nr. 4 SchulG.NW (Schulgesetz Norgrhein-Westfalen); § 17 OWiG (Ordnungswidrigkeitengesetz). Applicants further seek consistency of Convention law as relates to Protocol 1, Article 2 in light of the decision of the Grand Chamber in the *Case of Folgero and Others v. Norway*, Application No. 15472/02, judgment of 29 June 2007. The denial of opt-outs for “sexual education” lessons which applicant parents deem to critically impair their ability to educate their children according to their religious convictions while at the same time allowing for the same opt-outs for religious education creates a discriminatory hierarchy of rights not founded in Convention law and contrary to the principles upon which the Convention was built.

VI. Statement Concerning Other International Proceedings

(See §19(f) of the Notes)

20. Have you submitted the above complaints to any other procedure of international investigation or settlement? If so, give full details.

No other submissions have been made to any other international tribunal or procedure.

VII. LIST OF DOCUMENTS

**(NO ORIGINAL DOCUMENTS,
ONLY PHOTOCOPIES,
DO NOT STAPLE, TAPE OR BIND DOCUMENTS)**

(See §19(g) of the Notes. Include copies of all decision referred to in Parts IV and VI above. If you do not have copies, you should obtain them. If you cannot obtain them, explain why not. No documents will be returned to you.)

21. (a) Decision of the Bundesverfassungsgericht (Constitutional Court) in Dojan v. Germany, 1 BVR 2724/08, 15. 11. 2008.
- (b) Dojan application to Constitutional Court, 06. 10. 2008.
- (c) Decision of Oberlandesgericht Hamm (OLG Hamm, upper court), 28. 08. 2008.
- (d) Dojan application to OLG Hamm with corresponding evidentiary submissions, 16. 07. 2008.
- (e) Decision of Amtsgericht Paderborn (lower court), 27. 05. 2008.

VIII. DECLARATION AND SIGNATURE

(See §19(h) of the Notes)

I hereby declare that to the best of my knowledge and belief, the information I have given in the present application form is correct.

Place Bratislava, Slovak Republic

Date May 14, 2009

(Signature of the applicant or of the representative)