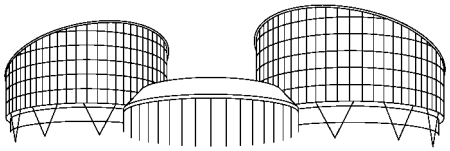

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

# Guide on Article 2 of Protocol No. 1 to the European Convention on Human Rights

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## Right to education

COUNCIL OF EUROPE
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# Note to readers

This guide is part of the series of Case-Law Guides published by the European Court of Human Rights (hereafter "the Court", "the European Court" or "the Strasbourg Court") to inform legal practitioners about the fundamental judgments delivered by the Strasbourg Court. This particular guide analyses and sums up the case-law on Article 2 of Protocol No. 1 to the European Convention on Human Rights (hereafter "the Convention" or "the European Convention") until 31 December 2015. Readers will find the key principles in this area and the relevant precedents.

The case-law cited has been selected among the leading, major, and/or recent judgments and decisions.*

The Court's judgments serve not only to decide those cases brought before the Court but, more generally, to elucidate, safeguard and develop the rules instituted by the Convention, thereby contributing to the observance by the States of the engagements undertaken by them as Contracting Parties (*Ireland v. the United Kingdom*, 18 January 1978, § 154, Series A no. 25.). The mission of the system set up by the Convention is thus to determine, in the general interest, issues of public policy, thereby raising the standards of protection of human rights and extending human rights jurisprudence throughout the community of the Convention States (*Konstantin Markin v. Russia* [GC], 30078/06, § 89, ECHR 2012).

* The case-law cited may be in either or both of the official languages (English and French) of the Court and the European Commission of Human Rights. Unless otherwise indicated, all references are to a judgment on the merits delivered by a Chamber of the Court. The abbreviation "(dec.)" indicates that the citation is of a decision of the Court and "[GC]" that the case was heard by the Grand Chamber.

# I. General principles

**Article 2 of Protocol No. 1 – Right to education**

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

## A. Structure of Article 2 of Protocol No. 1

1. The first sentence of Article 2 of Protocol No. 1 guarantees an individual right to education. The second guarantees the right of parents to have their children educated in conformity with their religious and philosophical convictions.

2. Article 2 of Protocol No. 1 constitutes a whole that is dominated by its first sentence, the right set out in the second sentence being an adjunct of the fundamental right to education (*Campbell and Cosans v. the United Kingdom*, § 40).

## B. Meaning and scope of Article 2 of Protocol No. 1

3. Article 2 of Protocol No. 1 is distinguished by its negative wording which means[1] that the Contracting Parties do not recognise such a right to education as would require them to establish at their own expense, or to subsidise, education of any particular type or at any particular level (*Case "relating to certain aspects of the laws on the use of languages in education in Belgium"* ("the *Belgian linguistic case*"), § 3, p. 31). Thus there is no positive obligation for States to create a public education system or to subsidise private schools. These areas are left to their discretion.

4. It cannot, however, be inferred that the State only has obligations to refrain from interference and no positive obligation to ensure respect for this right, as protected by Article 2 of Protocol No. 1. The provision certainly concerns a right with a certain substance and obligations arising from it. States cannot therefore deny the right to education for the educational institutions they have chosen to set up or authorise.

5. The right to education is not absolute, however, as it may give rise to implicitly accepted limitations, bearing in mind that "it by its very nature calls for regulation by the State" (ibid., § 5, p. 32; see also, *mutatis mutandis*, *Golder v. the United Kingdom*, § 38; *Fayed v. the United Kingdom*, § 65). Consequently, the domestic authorities enjoy in such matters a certain margin of appreciation, although the final decision as to the observance of the Convention's requirements rests with the Court. In order to ensure that the restrictions that are imposed do not curtail the right in question to such an extent as to impair its very essence and deprive it of its effectiveness, the Court must satisfy itself that they are foreseeable for those concerned and pursue a legitimate aim (*Leyla Şahin v. Turkey* [GC], § 154).

6. Unlike the position with respect to Articles 8 to 11 of the Convention, the permitted restrictions are not bound by an exhaustive list of "legitimate aims" under Article 2 of Protocol No. 1. Furthermore, a limitation will only be compatible with Article 2 of Protocol No. 1 if there is a reasonable relationship of proportionality between the means employed and the aim sought to be achieved (ibid., §§ 154 et seq.).

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1. This is confirmed by the *travaux préparatoires* (see in particular Doc. CM/WP VI (51) 7, p. 4, and AS/JA (3) 13, p. 4). In dismissing the "positive formula" adopted by the Council of Europe Assembly in August 1950, the signatory States apparently did not want the first sentence of Article 2 of Protocol No. 1 to become interpreted as an obligation for the States to take effective measures so that individuals could receive the education of their choosing and to create education themselves, or to subsidise private education.

7. In the area of education and teaching Article 2 of Protocol No. 1 is in principle the *lex specialis* (*Lautsi and Others v. Italy* [GC], § 59).

## C. Principles of interpretation

8. In a democratic society, the right to education, which is indispensable to the furtherance of human rights, plays such a fundamental role that a restrictive interpretation of the first sentence of Article 2 of Protocol No. 1 would not be consistent with the aim or purpose of that provision (*Leyla Şahin v. Turkey* [GC], § 137; *Timishev v. Russia*, § 64).

9. 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, which proclaim the right of everyone, including parents and children, "to respect for his private and family life", to "freedom of thought, conscience and religion", and to "freedom ... to receive and impart information and ideas" (*Kjeldsen, Busk Madsen and Pedersen v. Denmark*, § 52). In addition, Article 2 of Protocol No. 1 is also closely linked to Article 14 of the Convention and to the prohibition of discrimination.

10. To interpret the notions contained in Article 2 of Protocol No. 1, the Court has already relied in its case-law on international instruments such as the Universal Declaration of Human Rights (1948), the Convention against Discrimination in Education (1960), the International Covenant on Civil and Political Rights (1966), the International Covenant on Economic, Social and Cultural Rights (1966), the UN Convention on the Rights of the Child (1989) (*Catan and Others v. the Republic of Moldova and Russia* [GC], §§ 77-81), the Convention on the Recognition of Qualifications concerning Higher Education in the European Region (*Leyla Şahin v. Turkey* [GC], § 66), and the revised European Social Charter (*Ponomaryovi v. Bulgaria*).

# II. Right to education

**Article 2, first sentence, of Protocol No. 1 – Right to education**

> "No person shall be denied the right to education. ..."

## A. Principle of the right to education

11. The right to education covers a right of access to educational institutions existing at a given time (*Belgian linguistic case*, § 4, p. 31), transmission of knowledge and intellectual development (*Campbell and Cosans v. the United Kingdom*, § 33) but also the possibility of drawing profit from the education received, that is to say, the right to obtain, in conformity with the rules in force in each State, and in one form or another, official recognition of the studies which have been completed (*Belgian linguistic case*, §§ 3-5, pp. 30-32), for example by means of a qualification. But a refusal to recognise a specialised medical course followed abroad, because the required conditions were not satisfied, did not constitute a violation of Article 2 of Protocol No. 1 (*Kök v. Turkey*, § 60).

12. Article 2 of Protocol No. 1 concerns elementary schooling (*Sulak v. Turkey* (dec.)) but also secondary education (*Cyprus v. Turkey* [GC], § 278), higher education (*Leyla Şahin v. Turkey* [GC], § 141; *Mürsel Eren v. Turkey*, § 41) and specialised courses. Thus the holders of the right guaranteed in Article 2 of Protocol No. 1 are children, but also adults, or indeed any person wishing to benefit from the right to education (*Velyo Velev v. Bulgaria*).

13. Furthermore, the State is responsible for public but also private schools (*Kjeldsen, Busk Madsen and Pedersen v. Denmark*). In addition, the State cannot delegate to private institutions or individuals its obligations to secure the right to education for all. Article 2 of Protocol No. 1 guarantees the right to open and run a private school, but the States do not have a positive obligation to subsidise a particular form of teaching (*Verein Gemeinsam Lernen v. Austria* (dec.)). Lastly, the State has a positive obligation to protect pupils from both State and private schools from ill-treatment (*O'Keeffe v. Ireland* [GC], §§ 144-152).

14. The right to education guaranteed by the first sentence of Article 2 of Protocol no. 1 by its very nature calls for regulation by the State, regulation which may vary in time and place according to the needs and resources of the community and of individuals. Such regulation must never injure the substance of the right to education nor conflict with other rights enshrined in the Convention. The Convention therefore implies a just balance between the protection of the general interest of the Community and the respect due to fundamental human rights (*Belgian linguistic case*, § 5, p. 32).

## B. Restrictions on access to education

15. Restrictions on the right to education do exist even though no express restriction can be found in Article 2 of Protocol No. 1. However, any restrictions must not curtail the right in question to such an extent as to impair its very essence and deprive it of its effectiveness. They must be foreseeable for those concerned and pursue a legitimate aim, although there is no exhaustive list of "legitimate aims" under Article 2 of Protocol No. 1 (*Leyla Şahin v. Turkey*, § 154).

16. Thus the right to education does not rule out disciplinary measures, in particular temporary or permanent expulsion from an educational institution for fraud (*Sulak v. Turkey* (dec.)) or for misbehaviour (*Whitman v. the United Kingdom* (dec.)).

### 1. Language

17. Article 2 of Protocol No. 1 does not specify the language in which education must be conducted in order that the right to education should be respected. However the right to education would be meaningless if it did not imply in favour of its beneficiaries, the right to be educated in the national language or in one of the national languages, as the case may be (*Belgian linguistic case*, § 3, p. 31).

18. Thus the case of *Catan and Others v. the Republic of Moldova and Russia* [GC] concerned a violation of the right to education owing to the forced closure of schools in connection with the language policy of separatist authorities and the measures of harassment that followed their reopening. There was nothing to suggest that such measures pursued a legitimate aim. The Grand Chamber emphasised the fundamental importance of primary and secondary education for each child's personal development and future success. It reiterated that there was a right to receive education in a national language. The State which exercised effective control during the period in question over the relevant administration, regardless of the fact that it intervened neither directly nor indirectly in that administration's language policy, engaged its responsibility as regards the interference with the right to education.

19. The temporary expulsion of students who had asked the university administration to introduce optional classes in the Kurdish language also constituted a violation (*İrfan Temel and Others v. Turkey*).

### 2. Admission criteria and entrance examinations

20. The refusal by a State to guarantee access to a school may constitute a violation of the right to education (*Campbell and Cosans v. the United Kingdom*).

21. The Court, however, recognises the proportionality of certain restrictions with the right of access to education.

### a. Admission criteria

22. A State may impose criteria for admission to an educational institution. However, the fact of changing the rules governing access to university unforeseeably and without transitional corrective measures may constitute a violation of Article 14 of the Convention taken together with Article 2 of Protocol No. 1 (*Altınay v. Turkey*, §§ 56-61). Thus, in view of a lack of foreseeability to an applicant of changes to rules on access to higher education and the lack of any corrective measures applicable to his case, the impugned difference in treatment had restricted the applicant's right of access to higher education by depriving it of effectiveness and it was not, therefore, reasonably proportionate to the aim pursued.

23. It was not regarded as a denial of the right to education to limit access to academic studies to student candidates who had attained the academic level required to most benefit from the courses offered (*X. v. the United Kingdom*, Commission decision). In that case the applicant had failed his first-year exams and had not been attending all his obligatory tutorials. The university had considered that he did not have a sufficient level to repeat his first year of studies, but it did not exclude the possibility that he pursue a different subject.

24. In addition, a State is entitled to fix a maximum duration for university studies. In the Commission decision of *X. v. Austria*, the Austrian Government had set at seven years the maximum length of medical studies and had refused the applicant access to any medical school as he had not passed his exams within the allotted time.

### b. Compulsory entrance examination with *numerus clausus*

25. Legislation imposing an entrance examination with *numerus clausus* for university studies in medicine and dentistry (public and private sectors) did not constitute a violation of the right to education (*Tarantino and Others v. Italy*). In relation to the entrance examination, assessing candidates through relevant tests in order to identify the most meritorious students was a proportionate measure designed to ensure a minimum and adequate education level in the universities. As to the *numerus clausus* system, the capacity and resource considerations of universities, together with society's need for a particular profession, justified its existence.

### c. Annulment of a positive result in the entrance examination

26. The fact of annulling a candidate's positive result in a university entrance examination, in view of his poor results in previous years, entailed a violation of his right to education (*Mürsel Eren v. Turkey*). The decision had no legal or rational basis and was therefore arbitrary.

## 3. School fees

27. States may have legitimate reasons for curtailing the use of resource-hungry public services up to a point in the field of education, but not unreservedly. The State's margin of appreciation in this domain increases with the level of education, in inverse proportion to the importance of that education for those concerned and for society at large. Secondary education plays an ever-increasing role in successful personal development and in the social and professional integration of the individuals concerned. Any restrictions on access to it must not, in particular, have the effect of creating a discriminatory system in breach of Article 14 of the Convention (*Ponomaryovi v. Bulgaria* – see § 41 below).

## 4. Nationality

28. The right to education does not grant a right for an alien to enter or stay in a given country (*Foreign Students v. the United Kingdom*, Commission decision, § 4). As the right guaranteed was concerned primarily with elementary education, the expulsion of a foreign student did not, in principle, interfere with his right to education.

29. Otherwise, only very strong considerations may lead the Court to find compatible with the Convention a difference in treatment exclusively based on nationality. The right to education is directly protected by the Convention and it concerns a public service of a very specific nature which benefits not only users but more broadly society as a whole, whose democratic dimension involves the integration of minorities (*Ponomaryovi v. Bulgaria*).

30. In addition, in the case of *Timishev v. Russia*, the applicants' children had been refused admission to the school that they had been attending for the past two years. The true reason for the refusal had been that the applicant had surrendered his migrant's card and had thereby forfeited his registration as a resident in the relevant town. However, Russian law did not allow the exercise of the right to education by children to be made conditional on the registration of their parents' place of residence. The Court thus found that the applicant's children had been denied the right to education provided for by domestic law.

## 5. Minimum age requirement by means of an education certificate

31. The Court found inadmissible as manifestly ill-founded an application challenging the obligation to hold a primary-school leaving certificate in order to enrol in Koranic study classes (*Çiftçi v. Turkey* (dec.)). The restriction in question was intended to ensure that children who wished to receive religious instruction in Koranic study classes had attained a certain "maturity" through the education provided at primary school. The statutory requirement was in fact designed to limit the possible indoctrination of minors at an age when they wondered about many things and, moreover, when they might be easily influenced by Koranic study classes.

## 6. Legal questions

### a. Prisons

32. Prisoners legally detained continue to enjoy all the fundamental rights and freedoms guaranteed by the Convention, with the exception of the right to liberty. They thus have the right to education guaranteed by Article 2 of Protocol No. 1. The refusal to enrol a prisoner in an existing prison school constituted a violation of that provision (*Velyo Velev v. Bulgaria*). However, prisoners are not entitled to invoke Article 2 of Protocol No. 1 to impose on the State an obligation to organise a particular type of education or training in prison.

33. The fact that an applicant had been prevented, during the period corresponding to his detention after being convicted by a court, from continuing his university course, was not interpreted as a deprivation of the right to education within the meaning of Article 2 of Protocol No. 1 (*Georgiou v. Greece* (dec.); *Durmaz and Others v. Turkey* (dec.); *Arslan v. Turkey* (dec.)). In addition, the Court declared inadmissible as manifestly ill-founded an application concerning the applicant's inability to finish his last year of secondary school while serving a prison sentence (*Epistatu v. Romania*).

### b. Criminal investigation

34. In the case of *Ali v. the United Kingdom*, the Court found that a pupil could be excluded from a secondary school for a lengthy period pending a criminal investigation into an incident in the school without this amounting to a denial of the right to education, provided the proportionality principle was upheld. The applicant was only excluded until the termination of the criminal investigation.

Moreover, the applicant was offered alternative education during the period of exclusion, and although the alternative did not cover the full national curriculum, it was adequate in view of the fact that the period of exclusion was at all times considered temporary pending the outcome of the criminal investigation. However, the situation might well have been different if a pupil of compulsory school age were to be permanently excluded from one school and were not able to subsequently secure full-time education in line with the national curriculum at another school.

### c. Removal and eviction measures

35. The discontinuance of education as a result of deportation has not been regarded as a breach of Article 2 of Protocol No. 1. If a removal measure prevents someone from continuing their education in a given country, that measure cannot *per se* be seen as an interference with the person's right to education under that Article (see the Commission decisions in *Sorabjee v. the United Kingdom*; *Jaramillo v. the United Kingdom*; *Dabhi v. the United Kingdom*).

36. Furthermore, the eviction of a gypsy applicant from his land, when his grandchildren were going to a school next to their home on that land, did not constitute a violation of Article 2 of Protocol No. 1. The applicant had failed to substantiate his complaints that his grandchildren had effectively been denied the right to education as a result of the planning measures complained of (*Lee v. the United Kingdom* [GC]).

## C. Discrimination in access to education

37. Where a State applies different treatment in the implementation of its obligations under Article 2 of Protocol No. 1, an issue may arise under Article 14 of the Convention.

**Article 14 of the Convention – Prohibition of discrimination**

> "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."

38. For a difference in treatment not to be regarded as discriminatory, it must pursue a legitimate aim. In the *Belgian linguistic case* the Court had occasion to address the question of the inability for children with French as their mother tongue, living in a Dutch-speaking region, to follow classes in French whereas Dutch-speaking children living in the French-language region could follow classes in Dutch. It found that the measure in question was not imposed in the interest of schools, for administrative or financial reasons, but proceeded solely from considerations relating to language (§ 32, p. 70). There had thus been a violation of Article 2 of Protocol No. 1 taken together with Article 14 of the Convention.

39. In order to comply with Article 14, the existence of a legitimate aim is insufficient. The difference in treatment must also be proportionate. Thus, where the Court examined changes to a system of access to university, it found a violation of Article 14 taken together with Article 2 of Protocol No. 1, even though the aim of those changes was the rapid improvement of the quality of higher education. It took the view that on account of the unforeseeability of its application and in the lack of any corrective measures, the implementation of the new system was not reasonably proportionate to that aim (*Altınay v. Turkey*, § 60).

### 1. Persons with disabilities

40. The specific case of persons with disabilities has only rarely been raised before the Court. Under Article 2 of Protocol No. 1 taken alone, the former Commission took the view that there was an

increasing body of opinion which held that, whenever possible, disabled children should be brought up with other children of their own age. That policy could not, however, apply to all handicapped children. A wide measure of discretion had to be left to the appropriate authorities as to how to make the best use possible of the resources available to them in the interests of disabled children generally. It could not be said that the second sentence of Article 2 required the placing of a child with a serious hearing impairment in a regular school (either with the expense of additional teaching staff which would be needed or to the detriment of the other pupils) rather than in an available place in a special school (*Klerks v. the Netherlands*, Commission decision). The use of public funds and resources also led to the conclusion that the failure to install a lift at a primary school for the benefit of a pupil suffering from muscular dystrophy did not entail a violation Article 2 of Protocol No. 1, whether taken alone or together with Article 14 of the Convention (*McIntyre v. the United Kingdom*).

## 2. Administrative status and nationality

41. In the case of *Ponomaryovi v. Bulgaria*, the Court addressed the case of two pupils of Russian nationality living in Belgium with their mother but not having permanent residence permits. Whereas secondary education was free in Bulgaria, these two pupils, on account of their administrative status, had been charged school fees. The applicants were not in the position of individuals arriving in the country unlawfully and then laying claim to the use of its public services, including free schooling. Even when the applicants found themselves, somewhat inadvertently, in the situation of aliens lacking permanent residence permits, the authorities had no substantive objection to their remaining in Bulgaria and apparently never had any serious intention of deporting them. The Bulgarian authorities had not taken this situation into account. In any event, the legislation did not provide for any exemption from school fees. Consequently, and in view of the importance of secondary education, the Court found that the requirement for the two pupils to pay fees for their secondary education on account of their nationality and immigration status constituted a violation of Article 14 of the Convention read in conjunction with Article 2 of Protocol No. 1.

## 3. Ethnic origin

42. The Court has addressed in many cases the difficulties relating to the education of Roma children in a number of European States (*D.H. and Others v. the Czech Republic* [GC], § 205). As a result of their turbulent history and constant uprooting the Roma have become a specific type of disadvantaged and vulnerable minority. They therefore require special protection and this protection extends to the sphere of education (ibid., § 182).

43. Given the Roma community's vulnerability, a difference of treatment in order to correct inequality made it necessary for States to pay particular attention to their needs, and for the competent authorities to facilitate the enrolment of Roma children, even if some of the requisite administrative documents were missing (*Sampanis and Others v. Greece*, § 86).

44. However, the mere enrolment in schools of Roma children does not suffice for a finding of compliance with Article 14 of the Convention taken together with Article 2 of Protocol No. 1. In this connection, the Court has relied extensively on reports by the European Commission against Racism and Intolerance (ECRI) (*Oršuš and Others v. Croatia* [GC]; *D.H. and Others v. the Czech Republic* [GC]). The enrolment must also take place in satisfactory conditions. The Court accepted that a State's decision to retain the special-school system was motivated by the desire to find a solution for children with special educational needs (ibid., § 198). Similarly, temporary placement of children in a separate class on the ground that they lack an adequate command of the language is not, as such, automatically in breach of Article 14 (*Oršuš and Others v. Croatia* [GC], § 157). However, the misplacement of Roma children in special schools has a long history across Europe (*Horváth and Kiss v. Hungary*, § 115). Consequently, schooling arrangements for Roma children must be attended by

safeguards that ensure that the State takes into account their special needs (*D.H. and Others v. the Czech Republic* [GC], § 207; *Sampanis and Others v. Greece*, § 103). The decision must be transparent and based on clearly defined criteria, not only ethnic origin (ibid., § 89; *Oršuš and Others v. Croatia* [GC], § 182). Lastly, such measures cannot be regarded as reasonable and proportionate where they result in an education which compounds the difficulties of Roma children and compromises their subsequent personal development instead of tackling their real problems or helping them to integrate into the ordinary schools and develop the skills that would facilitate life among the majority population (*D.H. and Others v. the Czech Republic*, § 207). A lack of discriminatory intent is not sufficient. The States are under a positive obligation to take positive effective measures against segregation (*Lavida and Others v. Greece*, § 73).

# III. Respect for parental rights

**Article 2, second sentence, of Protocol No. 1 – Right to education**

> "... In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions."

## A. Scope

45. It is onto the fundamental right to education that is grafted the right of parents to respect for their religious and philosophical convictions. Consequently, parents may not refuse a child's right to education on the basis of their convictions (*Konrad and Others v. Germany* (dec.)).

46. The term "parents" seems to be interpreted widely by the Court; it is not confined to fathers and mothers but may include, at least, grandparents (*Lee v. the United Kingdom* [GC]). Conversely, a child receiving education cannot claim to be a victim of the rights guaranteed to the parents by the second sentence of Article 2 of Protocol No. 1 (*Eriksson v. Sweden*, § 93).

47. The word "respect" means more than "acknowledge" or "taken into account"; in addition to a primarily negative undertaking, it implies some positive obligation on the part of the State (*Campbell and Cosans v. the United Kingdom*, § 37). As to the word "convictions", taken on its own, it is not synonymous with the terms "opinions" and "ideas". It denotes views that attain a certain level of cogency, seriousness, cohesion and importance (*Valsamis v. Greece*, §§ 25 and 27). The refusal of parents to accept corporal punishment at their child's school was thus covered by their philosophical convictions (*Campbell and Cosans v. the United Kingdom*, § 36).

48. Article 2 of Protocol No. 1 applies to all subjects and not only religious instruction. Sexual education and ethics thus fall within the scope of Article 2 of Protocol No. 1 (*Jimenez Alonso and Jimenez Merino v. Spain*; *Dojan and Others v. Germany* (dec.); *Appel-Irrgang and Others v. Germany* – see § 53 below).

49. Moreover, the provision applies to both the content of the teaching and the manner of its provision. Article 2 of Protocol No. 1 thus also applied to an obligation to parade outside the school precincts on a holiday. The Court was surprised that pupils could be required to take part in such an event on pain of suspension from school – even if only for a limited time. However, it found that such commemorations of national events served, in their way, both pacifist objectives and the public interest, and that the presence of military representatives at some of the parades did not in itself alter the nature of those parades. Furthermore, the obligation on the pupil did not deprive her parents of their right to enlighten and advise their children, or to guide their children on a path in

line with the parents' own religious or philosophical convictions (*Efstratiou v. Greece*, § 32; *Valsamis v. Greece*, § 31).

50. The setting and planning of the curriculum fall in principle within the competence of the Contracting States (ibid., § 28) and there is nothing to prevent it containing information or knowledge of a religious or philosophical nature (*Kjeldsen, Busk Madsen and Pedersen v. Denmark*, § 53).

## B. Possibility of exemption

51. Parents sometimes invoke the right to respect for their religious convictions to justify a decision to educate their children at home. The Court has noted in this connection that there appears to be no consensus among the Contracting States with regard to compulsory attendance at primary school. While some countries permit home education, others provide for compulsory attendance at State or private schools. As a result, the Court has accepted as falling within the State's margin of appreciation the view that not only the acquisition of knowledge but also integration into, and first experiences of, society are important goals in primary-school education and that those objectives cannot be met to the same extent by home education, even if it allows children to acquire the same standard of knowledge provided by primary-school education. In the same case, the Court further regarded as being in accordance with its own case-law on the importance of pluralism for democracy the domestic courts' reasoning stressing both the general interest of society in avoiding the emergence of parallel societies based on separate philosophical convictions and the importance of integrating minorities into society. It therefore rejected a complaint concerning a refusal to allow the parents to educate their children at home as manifestly ill-founded (*Konrad and Others v. Germany* (dec.)).

52. It is sometimes necessary, if the parents' philosophical convictions are to be respected, for pupils to have the possibility of being exempted from certain classes. In the case of *Folgerø and Others v. Norway* [GC] (§§ 95-100), a refusal to grant the applicant parents full exemption from "Christianity, religion and philosophy" classes for their children in State primary schools gave rise to a violation of Article 2 of Protocol No. 1. Not only quantitative but even qualitative differences applied to the teaching of Christianity as compared to that of other religions and philosophies. There was admittedly the possibility of partial exemption but it related to the activity as such, not to the knowledge to be transmitted through the activity concerned. This distinction between activity and knowledge must not only have been complicated to operate in practice but also seems likely to have substantially diminished the effectiveness of the right to a partial exemption as such. The system of partial exemption was capable of subjecting the parents concerned to a heavy burden with a risk of undue exposure of their private life and the potential for conflict was likely to deter them from making such requests.

53. However, the possibility of an exemption does not have to be offered systematically. In the case of *Dojan and Others v. Germany* (dec.), compulsory sexual education classes were on the curriculum of primary school pupils. The school had decided that a theatre workshop would be organised at regular intervals as a mandatory event for the purpose of raising awareness of the problem of sexual abuse of children. In addition, it was a school tradition to organise an annual carnival celebration, but there was an alternative activity for children who did not wish to attend. The applicants prevented their children from taking part in all or some of the above-mentioned activities and were consequently fined. When two of the parents refused to pay they were imprisoned. The Court observed that the sex-education classes at issue aimed at 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 theatre workshop was consonant with the principles of pluralism and objectivity. As to the carnival celebrations at issue, these were not accompanied by

any religious activities and in any event the children had the possibility of attending alternative events. Consequently, the refusal to exempt the children from classes and activities that were regarded by their parents as incompatible with their religious convictions was not in breach of Article 2 of Protocol No. 1. In the same vein, the Court took the view that the inclusion of compulsory secular ethics classes without any possibility of exemption fell within the margin of appreciation afforded to States under Article 2 of Protocol No. 1 (*Appel-Irrgang and Others v. Germany*).

54. Although individual interests must on occasion be subordinated to those of a group, a balance must be achieved which ensures the fair and proper treatment of minorities and avoids any abuse of a dominant position (*Valsamis v. Greece*, § 27). The Court has, for example, found that the fact that a school curriculum gave more prominence to Islam as practised and interpreted by the majority of the population in Turkey than to the various minority interpretations of Islam or other religions and philosophies could not in itself be regarded as failing to respect the principles of pluralism and objectivity that might be analysed as indoctrination. However, in view of the specificities of the Alevi faith in relation to the Sunni conception of Islam, the parents concerned could legitimately take the view that the way in which "religious culture and ethical knowledge" classes were taught might entail for their children a conflict of allegiance between the school and their own values. In those circumstances an appropriate exemption was thus crucial (*Mansur Yalçın and Others v. Turkey*, §§ 71-75). Where parents were obliged, in this connection, to inform the school authorities of their religious or philosophical convictions, this was an inappropriate means of ensuring respect for their freedom of conviction, especially as, in the absence of any clear text, the school authorities always had the option of refusing such requests (*Hasan and Eylem Zengin v. Turkey*, §§ 75-76).

## C. Conspicuous religious symbols

55. The second sentence of Article 2 of Protocol No. 1 prevents States from pursuing an aim of indoctrination that might be considered as not respecting parents' religious and philosophical convictions (*Kjeldsen, Busk Madsen and Pedersen v. Denmark*, § 53). However, the Court has also taken the view that the presence of crucifixes in State-school classrooms did not entail a violation of Article 2 of Protocol No. 1. In the Court's view, while it was true that by prescribing the presence of crucifixes – a sign which undoubtedly referred to Christianity – the regulations conferred on the country's majority religion preponderant visibility in the school environment, that was not in itself sufficient to denote a process of indoctrination on the respondent State's part. A crucifix on a wall was an essentially passive symbol and it could not be deemed to have an influence on pupils comparable to that of didactic speech or participation in religious activities. The effects of the greater visibility which the presence of the crucifix gave to Christianity in schools needed to be further placed in perspective, as it was not associated with compulsory teaching about Christianity and as the State opened up the school environment in parallel to other religions (*Lautsi and Others v. Italy* [GC], §§ 71-76).

56. Lastly, a State has a role as a neutral arbiter and must be very careful to ensure that when they permit students to manifest their religious beliefs on school premises, such manifestation does not become ostentatious and thus a source of pressure and exclusion. Consequently, the fact of refusing access to school to young girls wearing the veil did not constitute a violation of Article 2 of Protocol No. 1 since it did not deprive the parents of their right to guide their children on a path in line with the parents' own religious or philosophical convictions, and provided the refusal was foreseeable and proportionate (*Köse and Others v. Turkey*). The same was true in the context of higher education (*Leyla Şahin v. Turkey* [GC]).

# List of cited cases

The case-law cited in this Guide refers to judgments or decisions delivered by the Court and to decisions or reports of the European Commission of Human Rights ("the Commission").

Unless otherwise indicated, all references are to a judgment on the merits delivered by a Chamber of the Court. The abbreviation "(dec.)" indicates that the citation is of a decision of the Court and "[GC]" that the case was heard by the Grand Chamber.

The hyperlinks to the cases cited in the electronic version of the Guide are directed to the HUDOC database (<http://hudoc.echr.coe.int>) which provides access to the case-law of the Court (Grand Chamber, Chamber and Committee judgments and decisions, communicated cases, advisory opinions and legal summaries from the Case-Law Information Note) and of the Commission (decisions and reports), and to the resolutions of the Committee of Ministers.

The Court delivers its judgments and decisions in English and/or French, its two official languages. HUDOC also contains translations of many important cases into more than thirty non-official languages, and links to around one hundred online case-law collections produced by third parties.

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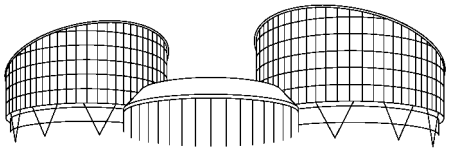

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

# Guide on Article 2 of Protocol No. 1 to the European Convention on Human Rights

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## Right to education

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