

Article 2 of the First Protocol to the ECHR
Paper for Culture, Language and Identity Working Group
Elizabeth Craig, 28 Nov 2007

Art 2: '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 religions and philosophical convictions.'

Note Reservation made at the time of signature, on 20 March 1952

'At the time of signing the present (First) Protocol, I declare that, in view of certain provisions of the Education Acts in the United Kingdom, the principle affirmed in the second sentence of Article 2 is accepted by the United Kingdom only so far as it is compatible with the provision of efficient instruction and training, and the avoidance of unreasonable public expenditure.'

The Purpose of Article 2 of the First Protocol

An examination of the travaux préparatoires reveals that the primary concern of the drafters was to guarantee the rights of parents in relation to their child's religious and moral education. It is also clear that it was not envisaged by the drafters that the State would be obliged to provide or subsidise particular types of education in order to respect the rights of parents. Although Article 2 of the First Protocol does not expressly recognise a right to establish private schools, the European Court of Human Rights has noted that the travaux préparatoires 'indisputably demonstrate ... the importance attached by many members of the Consultative Assembly and a number of governments to freedom of teaching, that is to say freedom to establish private schools'.¹

The European Court of Human Rights has stressed that the primary importance of Article 2 lies in relation to teaching in the State system:

'The second sentence of Article 2 aims in short at safeguarding the possibility of pluralism in education, which possibility is essential for the preservation of the 'democratic society' as conceived by the Convention. In view of the power of the modern State, it is above all through State teaching that this aim must be realised.'²

It has further emphasised that what is required is protection from indoctrination rather than symbolic recognition of minority groups within the curriculum:

[T]he State, in fulfilling the functions assumed by it in relation 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.³

¹ *Kjeldsen, Busk Madsen and Pedersen v Denmark* judgment of 7 December 1976 Series A No 23 (1979-80) 1 EHRR 711 para 50.

² *Ibid.*

³ *Ibid.* para 53.

A measure that conforms to the requirements of Article 2 could nonetheless infringe Article 2 in conjunction with Article 14. For example, in the *Belgian Linguistic* case the Court stated that:

[P]ersons subject to the jurisdiction of a Contracting State cannot draw from Article 2 of the Protocol the right to obtain from the public authorities the creation of a particular kind of educational establishment; nevertheless, a State which had set up such an establishment could not, in laying down entrance requirements, take discriminatory measures within the meaning of Article 14.⁴

It is also generally accepted that Article 2 in conjunction with Article 14 prohibits States from discriminating in the provision of subsidies to schools.

The rest of this paper includes summaries of cases decided by the European Court of Human Rights (and the House of Lords) on the merits under Article 2 of the First Protocol.

Religion

ECtHR cases

Kjeldsen v Denmark (1976) – integration of compulsory sex education into the curriculum – no violation of Art 2

Valsamis v Greece (1996) – applicants were Jehovah's Witnesses – children suspended from school for refusing to take part in school parade – no violation of Art 2 or Art 9

Sahin v Turkey (2005, Grand Chamber) – university rule that students whose heads were covered were not to be admitted to lectures, courses or tutorials - no violation of Art 2 or Art 9

Folgerø and Others v Norway (2007, Grand Chamber) – complaint by non-Christian parents that children were not granted full exemption from a compulsory subject in Christianity, Religion and Philosophy
Court - violation of Art 2

Zengin v Turkey (2007) – complaints about manner in which compulsory lessons in religious culture and ethics were taught - exemptions only available to Christians and Jews, not adherents of Alevism
Court – emphasis on Sunni Islam does not meet criteria of objectivity and pluralism – most other States provide right of opt-out – violation of Art 2

DH and Others v Czech Republic (2007, Grand Chamber) – placement of Roma children in special schools – violation of Art 14 in conjunction with Art 2

⁴ Case 'Relating to Certain Aspects of the Laws on the Use of Languages in Education in Belgium (Merits)' Series A No 6; (1979-80) 1 EHRR 252, s IB para 9.

House of Lords cases (UK)

R. (on the application of Williamson) v Secretary of State for Education and Employment (2005, House of Lords) – ban on corporal punishment in schools – parents argued unsuccessfully that this violated their rights under Art 2

R. (on the application of Begum) v Denbigh High School Governors (2006, House of Lords) – Muslim teenager, wanted to wear jilbab to school, excluded for failure to comply with school dress code – no breach of Art 2 or Art 9

Language

Belgian Linguistic case (1968)

Court - the right to education should include a right to be educated in the national language or one of the national languages rather than the language of one's choice, the second sentence of Article 2 could not be interpreted to cover parents' linguistic preferences

Cyprus v Turkey (2001) – all Greek Cypriot secondary schools in northern Cyprus closed, children who left to obtain their education in the south faced entry restrictions on their return

Court - focused on the failure of the Turkish authorities to make continuing provision for Greek-language education at the secondary-school level, having assumed responsibility for its provision at the primary level, and concluded that there had, in effect, been a denial of the substance of the right to education – violation of Art 2