

# **The Rights of Parents to Home-school Their Children in Europe**

Written by Mr J. Sperling, LL.M and Drs. P.J. van Zuidam

Spoken by Drs. P.J. van Zuidam at the World Congress of Families V, Forum 2  
10 August, 2009<sup>i</sup>

## **1. Introduction**

I am to talk about home-schooling, which is education given by the parents as well as the social network of the family, but under the full parental responsibility.

All European countries have compulsory education laws, and all they all require parents to provide their children with an education. In most countries, parents have the option of teaching their children themselves, instead of enrolling them in a public or private school. But the conditions on which they may do so are very different in each country.

For example, in the United Kingdom, there are few rules regarding what parents have to teach their children, no mandatory inspections, testing or other examinations. Home-schooled children who have never attended school are not registered as such. In France there are regular inspections both by school inspectors and by social workers, and the teaching result may not be less than the national curriculum. In Austria, there are no inspections, but home-schooled children have to pass the same annual exam as school children.

In a few countries home-schooling as such cannot satisfy the compulsory education law. This is the case in Slovakia, Cyprus, Germany and The Netherlands. The Dutch law gives some back door options, but Germany is particularly strict. Under laws in essence dating from 1938, all residents are prohibited from teaching their children, even foreigners who live in Germany for a short while and who plan to return to their own country, so that it would be in the children's best interest to continue their own national curriculum. The sanctions include large fines, prison sentences for parents, and foster care for children, sometimes even with the forced commitment of children to a psychiatric institution, only because they were home-schooled.

Until recently, home-schooling was also prohibited in the former Communist countries. But after the fall of the Communist regimes the new governments of most of these countries, including Russia, Poland, Rumania, Ukraine, the Czech Republic, and Hungary, have somehow authorized home-schooling as a recognition of the right of parents to choose the education of their children.

Despite the facts that so many European countries allow parents to teach their own children and that there is no evidence that home-schooling violates the right to education, the European Court of Human Rights has allowed States to prohibit home-schooling. In a 2006 case, Konrad and Others v. Germany, the Court recognized that the parental choice to home-school children is part of the right to privacy and family life. But the court also decided that the German prohibition of home-schooling did not

violate this right. I will discuss the Konrad case in more detail. I start to explain some of the international rules that are relevant to this case. I will close by describing a bit of the impact.

## **2. International law**

On December 10, 1948, the General Assembly of the United Nations adopted the Universal Declaration of Human Rights. The UDHR is a product of the post-World War II period, during which there was great interest in the international protection of human rights. When the atrocities committed by Nazi Germany became clear during and after the second World War, the international community realized that the protection on the national level had proven completely inadequate and that protection on an international level was necessary. Its preamble states that teaching and education are important aspects of human rights, since teaching and education can advance respect for human rights and can secure their effective recognition and observance.

The delegates considered the right to education as fundamental. The UDHR contains the following provision on the right to education and the rights of parents regarding their children's education. Article 26 states:

“1. Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. [...]

2. Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.

3. Parents have a prior right to choose the kind of education that shall be given to their children.”

But the UDHR is not legally binding. It is not a treaty; it only gives guidelines for the protection and promotion of human rights and fundamental freedoms. Nevertheless, it gave the foundation for a number of international treaties and national laws, such as the European Convention on Human Rights. This Convention is legally binding, and in most European countries its provisions can be invoked before national courts. It also has its own court, the European Court on Human Rights. In most European countries, national courts will accept its judgments as if they come from their own Supreme Court or even a higher authority.

The ECHR contains two provisions with respect to parental rights in education. Article 8 ECHR reads:

“Everyone has the right to respect for his private and family life.”

‘Family life’ includes the right and obligation of parents to raise their children and to have them educated in accordance with their beliefs.

Article 2 of the First Protocol to the ECHR reads:

“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.”

The European Court of Human Rights has defined the term “philosophical convictions” broadly. Not only does it apply to beliefs that are similar to religious beliefs, for example humanistic beliefs, but also includes a wide range of other parental views, including the choice of parents to teach their children themselves. Thus, under Article 8 ECHR and Article 2 of the First Protocol, the State must respect the choice of parents to home-school their children.

However, Article 8 ECHR and Article 2 of the First Protocol allow the State to restrict this choice for a limited number of reasons. The main reason is that parents must not violate their children’s right to education. In other words, the State only has to respect the parental choice to the extent that it does not violate the child’s right to education. Thus, the State is allowed to infringe on the rights of parents in order to protect this right.

When a State takes actions limiting parental rights, however, it must comply with a number of procedural conditions: it must be necessary and proportional. In particular, the limitation must be necessary to achieve its goal and cannot go any further than required to achieve this goal.

### **3. Konrad and Others v. Germany**

There have been four (published) cases on home-schooling under the ECHR. Each of these cases confirmed that parent’s choice to educate their children at home falls within Articles 8 and Protocol 1, Article 2 ECHR, but each recognized that the State has the right to restrict this choice. In the most recent case, *Konrad and Others v. Germany*, the Court even held that a complete prohibition of home-schooling as a means to satisfy compulsory education requirements was consistent with parental rights to choose to educate their children at home.

The facts of this case were as follows. A number of Christian parents living in Baden-Württemberg requested permission from the local educational authorities to educate their children at home. There was no school of their faith near their home, and they would have been compelled to enroll their children in the public school. According to the Court records, the parents stated that one of the reasons they preferred to home-school their children was that they did not want their children to be in contact with children of other beliefs. The authorities refused permission.

The parents appealed, but the German courts ruled against them at every level. The German courts held that the acquisition of knowledge and integration into and first experiences of society are important goals in primary-school education. They found that those objectives could not be met to the same extent by home-schooling, even if it allowed children to acquire the same standard of knowledge as provided by primary-school education. They stressed 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.

The parents appealed to the European Court of Human Rights, alleging that the German authorities’ refusal to allow them to educate their children at home violated their right to ensure an education for their children in conformity with their own religious convictions as guaranteed by Protocol 1, Article 2. The Court, however, held that the German authorities’ “presumptions” about home-schooling were not erroneous and did not fall within the States’ power in setting up and

interpreting rules for their education systems. Moreover, the Court held, parents would still be able to teach their religious beliefs to their children outside school hours.

In my opinion, this decision was decided incorrectly under Articles 8 and Protocol 1, Article 2 ECHR.

First, the Court did not examine whether a complete prohibition of home-schooling was necessary to protect children's right to education. If the Court had done so, it could not have decided as it did. The German authorities presented no evidence that home-schooling is less effective than school education, and even the Court labeled their arguments as "presumptions". Still, the Court did not require the German authorities to present any evidence for their assumptions, even though the State limitation on parental rights was very severe. If the Court had asked for evidence, the German authorities would have been unable to provide it, since to my knowledge there is no such evidence.

In fact, research comparing home-schooled children and adults to school educated children and adults concludes that home-schooled children and adults perform as well academically as their school-educated peers, if not better. Similar results have been reported for children with learning disabilities and children from lower social and economic backgrounds. There is also no evidence that home-schooling leads to the formation of "parallel societies" or groups that violate the basic principles of a democratic society. On the contrary, studies suggest that home-schooling actually furthers the State's interests in producing productive and socially engaged citizens.

Second, a complete prohibition of home-schooling is not proportional to the State objective of social integration. Neither the European Court nor the German authorities examined whether the purpose of promoting social integration could have been achieved by less restrictive means. But it is obvious that less restrictive means are available. The State could, for example, require home-schooling parents to provide their children with instruction on citizenship and the protection of fundamental rights and freedoms. The State could conduct inspections to ensure that these conditions are respected. There are many examples of how home-schooling can be regulated.

Third, the text of Protocol 1, Article 2 requires the State to respect parents' rights "*in the exercise* of any functions that it assumes in relation to education and to teaching". Justifying an infringement with the argument that parents are still allowed to teach their children in conformity with their own beliefs outside the exercise of the State functions means violating the text of Protocol 1, Article 2.

#### **4. Conclusion**

The conclusion can only be that the Konrad judgment is incorrect as a matter of law and reflects prejudices and ignorance about home-schooling. This may not be the last case that the ECHR has to deal with, and it may also be that the UN Human Rights Committee, another ruling body in human rights matters that most European citizens can turn to, assumes a different legal perspective on home-schooling. This has not been attempted yet as far as I am aware.

Nevertheless, this ruling stands and can have a major impact on parents' rights to home-school their children all over Europe, even in countries where it is now legal. In Sweden, for example, the government has now proposed to abolish home-schooling completely. In England the government is looking into tightening the rules applicable to home-schooling. The Konrad decision could serve as a legal support for these changes.

### **Appendix: the Netherlands**

The Konrad decision currently provides legal protection from challenges in the few European countries where home-schooling as such is prohibited, including the Netherlands.

In Holland, home-schooling was prohibited during the Nazi occupation because the Nazis saw school education as an important means of indoctrinating children. Home-schooling was legalized again after World War II, but then prohibited under a partly Socialist government in 1969. The 1969 law is unusual, though. It contains a provision that exempts parents and children from compulsory school enrollment if no school on a reasonable distance from their home advances their religious or philosophical convictions. Children under this exemption are educated at home. The remaining legal duty for the parent is to guide the child and to advance the development of his/her personality.

Another way to educate children at home is to enroll him/her in a foreign school that provides distance education and guidance.

In recent years, proposals have been made to make it easier for parents to choose to educate their children at home, while creating a new regime to ensure that parents who do not send their children to school do satisfy their parental obligation to provide their children with an education. So far, no action has been taken. The number of affected families is a few hundred, and the issue receives far more attention than the numbers warrant.

Underlying the controversy in the Netherlands may be the fear – also expressed in the Konrad case – that home-schooling can lead to the formation of “parallel societies” or isolated groups. This concern seems completely misplaced, however; as already mentioned, there is no evidence that home-schooling in fact has this effect. It also seems inconsistent to prohibit home-schooling on this ground while allowing separate religious schools, which would be, if anything, more likely to lead to the creation of isolated groups.

On the other hand, the public awareness of home-schooling is growing. A few well-received interviews of home-educating families in parenting magazines may suggest that the Dutch public is more positively interested to home-schooling than it was a few years ago and more aware that home-schooling is in fact permitted in most developed countries.

Over time, I hope that the Dutch law on home-schooling will eventually reflect a sensible balance between parental rights and children's right to education,

and not the ignorance and prejudices that underlay the European Court's judgment in Konrad.

---

<sup>i</sup> This speech is displayed on: <http://www.ustream.tv/recorded/1960634>