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on civil and  
political rights**

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HUMAN RIGHTS COMMITTEE  
Eighty-second session  
18 October - 5 November 2004

**VIEWS**

**Communication No. 1155/2003**

<u>Submitted by:</u>	Ms. and Mr. Unn and Ben Leirvåg, and their daughter Guro, Mr. Richard Jansen, and his daughter Maria, Ms. and Mr. Birgit and Jens Orning, and their daughter Pia Suzanne, and Ms. Irene Galåen and Mr. Edvin Paulsen, and their son Kevin Johnny Galåen (represented by the law firm Stavrum, Nystuen & Bøen, by lawyer Laurentz Stavrum)
<u>Alleged victim:</u>	The authors
<u>State party:</u>	Norway
<u>Date of communication:</u>	25 March, 7 and 10 September 2002 (initial submission)
<u>Document references:</u>	Special Rapporteur's rule 91 decision, transmitted to the State party on 30 January 2003 (not issued in document form).
<u>Date of adoption of Views:</u>	3 November 2004

On 3 November 2004, the Human Rights Committee adopted the annexed draft as the Committee's Views, under article 5, paragraph 4, of the Optional Protocol in respect of communication No. 1155/2003. The text of the Views is appended to the present document.

[ANNEX]

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\* Made public by decision of the Human Rights Committee.

**ANNEX**

Views of the Human Rights Committee under article 5, paragraph 4, of  
the Optional Protocol to the International Covenant on Civil and Political rights

Eighty-second session

concerning

**Communication No. 1155/2003\*\***

Submitted by: Ms. and Mr. Unn and Ben Leirvåg, and their daughter Guro, Mr. Richard Jansen, and his daughter Maria, Ms. and Mr. Birgit and Jens Orning, and their daughter Pia Suzanne, and Ms. Irene Galåen and Mr. Edvin Paulsen, and their son Kevin Johnny Galåen (represented by the law firm Stavrum, Nystuen & Bøen, by lawyer Laurentz Stavrum)

Alleged victim: The authors

State party: Norway

Date of communication: 25 March, 7 and 10 September 2002 (initial submission)

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 3 November 2004,

Having concluded its consideration of communication No. 1155/2003, submitted to the Human Rights Committee on behalf of Ms. and Mr. Unn and Ben Leirvåg, and their daughter Guro, Mr. Richard Jansen, and his daughter Maria, Ms. and Mr. Birgit and Jens Orning, and their daughter Pia Suzanne, and Ms. Irene Galåen and Mr. Edvin Paulsen, and their son Kevin Johnny Galåen, under the Optional Protocol to the International Covenant on Civil and Political Rights,

Having taken into account all written information made available to it by the authors of the communication, and the State party,

Adopts the following:

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\*\* The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Nisuke Ando, Ms. Christine Chanet, Mr. Franco Depasquale, Mr. Maurice Glèlè Ahanhanzo, Mr. Walter Kälin, Mr. Ahmed Tawfik Khalil, Mr. Rajsoomer Lallah, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Martin Scheinin, Mr. Ivan Shearer, Mr. Hipólito Solari Yrigoyen, Ms. Ruth Wedgwood, Mr. Roman Wieruszewski and Mr. Maxwell Yalden.

### **Views under article 5, paragraph 4, of the Optional Protocol**

1. The authors of the communication are Ms. and Mr. Unn and Ben Leirvåg, and their daughter Guro, Mr. Richard Jansen, and his daughter Maria, Ms. and Mr. Birgit and Jens Orning, and their daughter Pia Suzanne, and Ms. Irene Galåen and Mr. Edvin Paulsen, and their son Kevin Johnny Galåen. All are Norwegian citizens who claim to be victims of violations of articles 17, 18, and 26, of the International Covenant on Civil and Political rights by Norway. They are represented by counsel.

#### **The general background submitted by the authors**

2.1 Norway has a state religion and a State Church, of which approximately 86 % of the population are members. Article 2 of the Norwegian Constitution states that the Evangelical Lutheran Church is the official state religion, and further determines that “those of the inhabitants, who subscribe to this have an obligation to bring up their children in the same manner”. Christianity has been taught since the general mandatory education was introduced in 1739, but from the time of the Dissenter or Non-conformist Act of 1845, a right of exemption for children of other faiths has existed.

2.2 At the same time, pupils so exempted had the right to participate in a non-denominational alternative life stance subject “life stance knowledge”. However, it was not compulsory for the exempted pupils to participate or attend tutoring in this subject, and the subject did not have the same basic framework as other subjects, for example the number of school hours. A number of pupils thus participated in neither the Christianity nor life stance subjects.

2.3 In August 1997, the Norwegian government introduced a new mandatory religious subject in the Norwegian school system, entitled “Christian Knowledge and Religious and Ethical Education” (hereafter referred to as CKREE) replacing the previous Christianity subject and the life stance subject. This new subject only provides for exemption from certain limited segments of the teaching. The new Education Act’s §2 (4) stipulates that education provided in the CKREE subject shall be based on the schools’ Christian object clause<sup>1</sup> and provide “thorough

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<sup>1</sup> Paragraph 2 (4) of the Education Act reads as follows: ”Section 2-4. Teaching the subject CKREE. Exemption from regulations, etc: Teaching in CKREE shall

- Provide a thorough knowledge of the Bible and Christianity both as cultural heritage and Evangelical-Lutheran faith,
- Provide knowledge of other Christian denominations,
- Provide knowledge of other world religions and philosophies of life, ethical and philosophical topics,
- Promote understanding and respect for Christian and humanist values and
- Promote understanding, respect and the ability to carry out a dialogue between people with different views concerning beliefs and philosophies of life.

CKREE is an ordinary school subject that shall normally be attended by all pupils. Teaching in the subject shall not involve preaching.

knowledge of the Bible and Christianity as a cultural heritage and Evangelical-Lutheran Faith”. During the preparation of the Act, the Parliament instructed the Ministry to obtain a professional evaluation of the Act’s relationship with human rights. This evaluation was carried out by the then Appeals Court judge Erik Møse, who stated that:

*“As the situation stands, I find that the safest option is a general right of exemption. This will mean that the international inspectorate bodies will not involve themselves with the questions of the doubt raised by compulsory education. However, I cannot state that the partial exemption will be in contravention of the conventions. The premise is that one establishes an arrangement that in practice lies within their (the conventions’) frameworks. Much will depend on the further legislative process and the actual implementation of the subject.”*

2.4 The Ministry’s circular on the subject states that: *“When pupils request exemption, written notification of this shall be sent to the school. The notification must state the reason for what they experience as the practice of another religion or affiliation to a different life stance in the tutoring.”* A later circular from the Ministry states that demands for exemption on grounds other than those governed by clearly religious activities must be assessed on the basis of strict criteria.

2.5 The Norwegian Humanist Association (the NHA), of which the authors are members, engaged an expert in Minority Psychology in the autumn of 2000 to investigate and report on how children react to conflicting life stance-related upbringing and education both in school and at home. He interviewed among others the authors. His conclusion was amongst others that both children and parents (and in all likelihood the school) experience conflicts of loyalty, pressure to conform and acquiesce to the norm, and for some of the children bullying and a feeling of helplessness. The report was put before the State party and presented as evidence in Supreme Court proceedings.

2.6 Due to criticism of the subject and the limited right to exemptions, the legislators decided that the subject would be evaluated in the course of a three-year period after its introduction. The

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Teachers of CKREE shall take as their point of departure the objects clause of the primary and lower secondary school laid down in section 1-2, and present Christianity, other religions and philosophies of life on the basis of their distinctive characteristics. Teaching of the different topics shall be founded on the same educational principles.

On the basis of written notification from parents, pupils shall be exempted from attending those parts of the teaching at the individual school that they, on the basis of their own religion or philosophy of life, perceive as being the practice of another religion or adherence to another philosophy of life. This may involve religious activities either in or outside the class room. In cases where exemption is notified, the school shall, as far as possible and especially in the lower primary school, seek solutions involving differentiated teaching within the curriculum.

Pupils who have reached the age of 15 may themselves give written notification pursuant to the fourth paragraph.”

Ministry gave this task to the Norwegian Research Council, which engaged three research institutes carry out the evaluation. The results were published in two reports in October 2000. One of the reports concluded that, “*the partial exemption arrangements did not function in a way that parents’ rights were sufficiently protected*”. Subsequently, the Ministry issued a press release stating that “*the partial exemption does not function as intended and should therefore be thoroughly reviewed*”.

2.7 The issue was debated in Parliament and a proposal was adopted that from the start of the school year 2002, the subject’s name should be “Christianity and General Religious and Moral Education”. It was emphasized that all teaching would be based on the school’s Christian object clause and that Christianity covered 55% of the teaching hours, leaving 25% to other religious/life stances and 20% to ethical and philosophical themes. A standardised form for applications for exemption from religious activities was issued to simplify existing exemption arrangements. The idea was that it would not be necessary to submit the application form more than once per educational stage, in other words three times during the total period of schooling. It was emphasized that it was still only religious activities, not the knowledge thereof, that were subject to exemption. Subsequently, a Curriculum Group was gathered to assist the Norwegian Board of Education in implementing the changes. Although the majority of the Curriculum Group voted against it, the Ministry included in the revised curriculum that a clause that the teaching of knowledge of religions and life stances that are not represented in the local community can be postponed from the primary school until the intermediate stage. The authors contend that this confirms the prioritising of the majority’s identity at the cost of pluralism

2.8 Several organisations representing minorities with different beliefs voiced strong objections to the CKREE subjects. After school started in the autumn of 1997, a number of parents, including the authors, demanded full exemption from relevant instruction. Their applications were rejected by the schools concerned, and on administrative appeal to the Regional Director of Education, on the ground that such exemption was not authorized under the Act.

2.9 On 14 March 1998, the NHA and the parents of eight pupils, including the authors in the present case, instituted proceedings before the Oslo City Court. By judgment of 16 April 1999, the Oslo City Court rejected the authors’ claims. On 6 October 2000, upon appeal, the Borgarting Court of Appeal upheld this decision. The decision was confirmed upon further appeal, by the Supreme Court in its judgement of 22 August 2001, thus it is claimed that domestic remedies have been exhausted. Three of the other parents in the national court suit, and the NHA, decided to bring their complaint to the European Court of Human Rights (hereinafter denominated ECHR)).

### **The facts as submitted by Ms. and Mr. Unn and Ben Leirvåg, and their daughter Guro**

3.1 Unn and Ben Leirvåg have a non-religious humanist life stance. They did not wish to see their daughter participate in CKREE classes, where textbooks are in conflict with their life stance. Their daughter, Guro (born on 17 February 1991), started at Bratsbergkleiva School in Porsgrunn in the autumn of 1997. Her application for full exemption from the CKREE subject was rejected. Subsequently, Guro attended CKREE classes.

3.2 As time passed with Guro's attendance of CKREE classes, the parents became aware that most of the material used in the subject was religious narrative and mythology as the sole basis for understanding the world and reflection on moral and ethical issues. Unn Leirvåg, a teacher, applied professional skills on the evaluation of the curriculum, syllabus and textbooks, and found that the main theme of the subject matter in the 1<sup>st</sup> to 4<sup>th</sup> school year was taught through retelling Bible stories and relating them to the pupils. The CKREE subject thereby ensures that the children are immersed deeply into the stories contained in the Bible as a framework around their own perception of reality. The children start with stories from the Old Testament; the main lesson appearing is that the worst thing a person can do is to disobey God. Subsequently, the Gospel is introduced, where the faith in a leader and follow him is put forward as an ideal. This is again followed by similar narrative from other religions. On this basis, the pupils are expected to learn how to think about how they should behave. It is submitted that religious doctrines form an uncritical basis, availing their daughter of no opportunity or means to distance herself from, make any reservation against, or criticize the basis. Guro started to use certain expressions that indicate that the things she learns about Christianity are synonymous with "good".

3.3 Against her parents' will, Guro found herself in a situation where a conflict of loyalties arose between school and home. The situation is such that Guro feels obliged to adapt what she tells her parents about school to match what she feels is acceptable to her parents.

#### **The facts as submitted by Mr. Richard Jansen and his daughter Maria**

4.1 Richard Jansen a humanist, does not wish his daughter to be taught a subject that provides for the opportunity of preaching of religion. When his daughter Maria (born on 3 March 1991) started to attend Lesterud School in Bærum in the autumn of 1997, an application for full exemption from the CKREE subject was filed on her behalf, which was rejected. A partial exemption was granted in accordance with the new law. The authors concluded that a partial exemption did not work in practice and appealed the decision to the Director of Education in Oslo and Akershus, who upheld the school's rejection in rulings of 25 May 1998 and January 2000.

4.2 Subsequently, Maria attended segments of the tutoring under the partial exemption arrangement. The authors state that Maria on several cases came home from school and said that she had been teased because her family did not believe in God. In connection with the end of year term celebrations for Christmas, Maria was picked out to learn by heart and perform a Christian text. The school was unable to provide her parents with a local timetable including an overview of the themes to be treated by Maria's class. Instead, they were referred to the main curriculum and the weekly timetable. Maria's parents did exempt her from some lessons during her first year at school. On these occasions she was placed in the kitchen where she was told to draw, sometimes alone, and sometimes under supervision. When her parents became aware that banishment to the kitchen was used as a punishment for pupils who behaved badly in class, they stopped exempting her from lessons.

**The facts as submitted by Ms. and Mr. Birgit and Jens Orning, and their daughter Pia Suzanne**

5.1 Birgit and Jens Orning are humanists and members of the NHA. They do not wish their children to participate in religious instruction that contains preaching. The CKREE subject influences the children in a Christian/religious direction. The authors believe that the child's life stance should develop freely and naturally, an objective difficult to achieve in the framework of the CKREE subject.

5.2 Their daughter, Pia Suzanne (born on 23 May 1990), started school in the autumn of 1997. The parents applied for full exemption from the CKREE subject. Their application was rejected. Subsequently, Pia Suzanne was enrolled under the partial exemption from the CKREE subject, an arrangement that did not work according to her parents' wishes. For example, even though Pia Suzanne was not to participate in religious tutoring that practiced preaching, she was enrolled in such tutoring.

5.3 The authors submit that their daughter was on at least two occasions instructed to learn and recite psalms and Bible texts in connection with the end of term Christmas celebrations. The children were also required to learn a number of psalms and Bible texts by heart, a fact that is confirmed by their workbooks. As a result of the religious instruction, Pia often experienced conflicts of loyalty between her home and her school. Her parents decided to move to another part of the country where they could enrol Pia in a private school.

**The facts as submitted by Ms. Irene Galåen and Mr. Edvin Paulsen, and their son Kevin Johnny Galåen**

6.1 Kevin Galåen 's (born on 18 February 1987) parents are humanists and want the tuition of their son to have a non-dogmatic, agnostic basis. They consider the CKREE subject to be so designed that it would gradually absorb their son into the Christian faith. Therefore, they applied for full exemption for Kevin from CKREE subject in the autumn 1997; the application was rejected. Subsequently, Kevin attended CKREE classes. The parents did not apply for partial exemption as they did not consider it to be of any use in their case.

6.2 Kevin did not start school with a fully developed life stance. It is important to Kevin's parents that he can experience his parent's life stance as a natural standpoint on his journey to adulthood and in his meeting with other life stances and philosophies. Kevin's parents consider that the CKREE subject does not comply with this requirement since they use Christianity as a basis for the treatment of existential questions and religious pedagogic methods. The life stance they believe in is only represented by small fragments and totally without a whole and consistence. They state that the CKREE subject is over-concentrating on a single religion.

**The Complaint**

7.1 The authors claim that the State party violated their rights to freedom of religion – i.e. their right to decide on the type of life stance upbringing and education their children shall have - and their right to privacy. It is also claimed that the partial exemption procedure violates the

prohibition of discrimination.

7.2 It is argued that the right to freedom of thought, conscience and religion, as enshrined in article 18 of the Covenant, also applies to non-religious life stances, and that parents have, pursuant to paragraph 4 of that article, a right to ensure that their children receive education in accordance with their own philosophical convictions, in particular in relation to mandatory, state-provided education. The authors refer to the Committee's Views in the case of *Hartikainen et al. v. Finland* (Communication No. 40/1978) and to General Comment No. 22 on article 18, in particular its paragraphs 3 and 6. Reference is also made to the Committee's Concluding Observations on the fourth periodic report by Norway, where the Committee reiterated its concerns over section 2 of the Constitution which provides that individuals professing the Evangelical-Lutheran religion are bound to bring up their children in the same faith and held that this provision of the Constitution is "incompatible with the Covenant" (CCPR/C/79/Add.112, paragraph 13).

7.3 The Committee on the Rights of the Child in its Concluding observations on the report by Norway, adopted on 2 June 2000, also expressed concerns about the CKREE, in particular on the process of providing for exemption which it considered to be potentially discriminatory (CRC/C/15/Add.126, paragraphs 26-27).

7.4 While the State party has argued that it is necessary for children to understand and learn about various life stances in order to develop their own life stance identity and a greater level of respect for other religions and life stances, the authors consider that a mandatory religious subject is not a suitable vehicle for obtaining the desired result. They find that the introduction of the CKREE has lowered the respect for their own life stances.

7.5 Furthermore, it is submitted that the obligatory attendance of CKREE teaching is not necessary in a democratic society. This is demonstrated through the absence of such compulsory teaching in Norway prior to the introduction of the CKREE, as well as in other European states.

7.6 The authors claim that a more suitable vehicle to achieve the desired result would be to strengthen the pre-CKREE life stance subject, and make it mandatory for pupils that are exempted from religious studies. The CKREE subject is based on Christian premises and fulfils only the part of the intention that applies to the strengthening of the identity of children from Christian homes. Therefore, the compulsory CKREE subject represents a violation of the authors' rights to display an independent life stance.

7.7 In relation to the children, it is submitted their right to choose and hold a religion or life stance of their own is violated, in that the compulsory CKREE subject forces them to participate in a learning process that includes indoctrination into the direction of a religious/Christian life stance. The authors have no wish to be incorporated in such a religious/Christian conception of reality.

7.8 The partial exemption arrangement implies that there shall be communication between the parents and the school about what they consider problematic. This implies that the parents' life stance forms the basis for the evaluation of the exemption, in particular during the early school

years. Instead of a free and independent development of the child's life stance, the child is forced to take a junior role in relation to its parents. This conflicts with the humanist view of the child's development shared by the authors' families. The authorities' evaluation of whether there are grounds for an application for exemption imposes on the children a conflict of loyalties between the school and the parents.

7.9 The partial exemption arrangement also requires that the authors describe to the school officers, the segments of the CKREE education that conflict with their own convictions, thus violating their right to privacy under article 17 of the Covenant. In relation to the children, it is submitted that they are subjected to a violation of their right to privacy to the extent that they are drawn into the exemption process.

7.10 The authors contend that the facts as submitted also constitute a violation of their rights under article 27 of the Covenant.

7.11 The authors submit that the exemption arrangement in place put heavier requirements on non-Christian parents than on Christian parents, making imposition of this procedure discriminatory, in violation of article 26 of the Covenant. The exemption arrangement requires that the authors have a clear insight into other life stances and educational methodology and practice, an ability to formulate their opinions, and the time and opportunity follow up the exemption arrangement in practice, whereas no such requirements apply to Christian parents. The exemption arrangement stigmatises in that it obliges the authors to state which segments of the CKREE subject are problematic in relation to their own life stance, which in turn will appear as a "deviation" from the commonly held life stance. The imposition on the authors to reveal their own life stance to school officers is claimed to be in violation of article 26 in conjunction with article 18, paragraphs 1-4.

7.12 In relation to the children, it is submitted that the partial exemption means that they shall not participate in the activity stipulated in the syllabus, but would gradually obtain the same knowledge of the theme in question as other pupils. The approach of those exempted to the material will therefore be qualitatively inferior to the other pupils. This entails a sense of being different which can be experienced as problematic and creates a sense of insecurity and conflicts of loyalty.

### **The State party's submission on admissibility**

8.1 On 3 July 2003, the State party commented on the admissibility of the complaint. It challenges the admissibility on the basis that the same matter is already being examined under another procedure of international investigation or settlement, for non-exhaustion of domestic remedies and for non-substantiation of their claims.

8.2 The State party notes that before the Norwegian courts, the authors' claims of exemption from the school subject named "*Christian Knowledge and Religious and Ethical Education*" were adjudicated in a single case, along with identical claims from three other sets of parents. The different parties were all represented by the same lawyer (the identical to counsel in this case), and their identical claims were adjudicated as one. No attempts were made to individualize

the cases of the different parties. The domestic courts passed a single judgment concerning all the parties, and none of the courts differentiated between the parties. Despite having pleaded their case jointly before the domestic courts, the parties opted to send complaints both to the European Court of Human Rights (ECHR) and to the Human Rights Committee. Four sets of parents lodged their communications with the Human Rights Committee, and three others with the ECHR on 20 February 2002. The communications to the Human Rights Committee and to the ECHR are to a large extent identical. Thus it appears that the authors stand together, but that they are seeking a review by both international bodies of what is essentially one case.

8.3 While the State party acknowledges the Committee's findings on communication 777/1997<sup>2</sup>, it submits that the present case should be held inadmissible because the same matter is being examined by the ECHR. It contends that the present case differs from the case of Sanchez Lopez in that the authors in that case argued that "*although the complaint submitted to the European Commission of Human Rights relates to the same matter, in that the complaint, the offence, the victim and, of course, the Spanish judicial decisions, including the relevant application for amparo, were not the same*". In the present case the same judgment by the Norwegian Supreme Court is being challenged before both bodies. The Norwegian Supreme Court judgment concerned an issue of principle, whether or not the CKREE subject violated international human rights standards.

8.4 If the communication is deemed admissible, the international bodies will need to take a general approach, i.e. they have to ask whether or not the subject as such, in the absence of the right to a full exemption, is in violation of the right to freedom of religion. As the primary objective of article 5, paragraph 2 (a), of the Optional Protocol is to prevent a duplication of examination by international bodies of the same case, such duplication is exactly what the different parties to the case adjudicated by Norwegian courts are operating.

8.5 On the issue of exhaustion of domestic remedies, the State party submits that the claims under articles 17 and 18 were not raised in the domestic proceedings, and thus domestic remedies have not been exhausted. It refers to Section 2-4, paragraph 4 of the Education Act which allows for partial exemption from teaching in the CKREE subject, namely from those parts of the teaching that they, on the basis of their own religion or philosophy of life, perceive as being the practice of another religion or adherence to another philosophy of life. Schools must allow for exemption from the parts of the tuition that reasonably may be perceived as being the practice of another religion or adherence to another life philosophy. A decision by a school not to allow for exemption is subject to administrative appeal to the County Governor, whose decision again may in turn be brought before the courts for a judicial review.

8.6 The authors did not avail themselves of the possibility of applying for partial exemption; their cases concern applications for full exemption from the CKREE subject. Any basis for finding a violation of articles 17 and 18 would have to be found in the tuition offered to the authors' children. Such violation, however, could have been avoided by applications for partial exemption. To comply with the requirement of exhaustion of domestic remedies, the authors would first have to exercise their right under Section 2-4, paragraph 4. If the school and the

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<sup>2</sup> Sanchez López v. Spain (777/1997), Decision adopted on 22 October 1996.

County Governor did not grant partial exemptions, the authors would have to apply for judicial review.

8.7 The State party argues that the authors' claims under articles 26 and 27 are insufficiently substantiated. As to article 26, the State party points out that the exemption clause of the Education Act applies to all parents, regardless of religion or life stance. Also, the syllabus for the CKREE subject provides for tuition in tenets of Christianity and other religions and life stances, shall not involve preaching, and shall be founded on the same educational principles.<sup>3</sup> Any differentiation between Christians and other groups is based on objective and reasonable criteria. The school subject at issue has important cultural and educational objectives. Limiting the possibilities for exemption to those parts of the tuition that reasonably may be perceived as being the practice of another religion or adherence to another philosophy of life, cannot be considered discrimination contrary to article 26.

8.8 On article 27, the State party notes that the authors have simply invoked this provision without making any attempt at explaining how a group defines itself as non-Christians, can constitute a religious minority within the meaning of article 27.

8.9 On 9 July 2003, the Committee's Special Rapporteur on New Communications and interim measures declined to separate the admissibility and the merits of the complaint.

### **The State party's submission on the merits**

9.1 On 21 November 2003, the State party commented on the merits of the complaint. The principal issue of the case before the domestic courts was whether or not the CKREE subject in general, in the absence of a full exemption clause, was in violation of the human rights treaties ratified by Norway, including the ICCPR. Accordingly, all claims made in the present communication have already been assessed by the domestic courts, including the Supreme Court of Norway. The Supreme Court concluded that the CKREE subject with its partial exemption clause is in full compliance with international human rights.

9.2 When Norwegian authorities proposed a new national curriculum for mandatory education to the Parliament in 1995, the Parliament's Standing Committee on Education, Research and Church Affairs ("the Education Committee") proposed that the curriculum should include a common subject encompassing Christianity and other religious and ethical beliefs. As some elements of the subject gave rise to concerns in relation to the rights of parents to secure their childrens' education in conformity with their own convictions, the Standing Committee requested the Government to prepare guidelines for exemption.

9.3 Proposals for amendments and guidelines for partial exemption to the CKREE subject were then drafted. The Government charged Erik Møse, then a Judge of the Court of Appeal, with the task of examining to what extent Norway's obligations might impose limitations with regard to compulsory instruction on issues of religion or philosophies of life, and to what extent exemption from instruction in the CKREE subject would have to be allowed for. Mr. Møse's

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<sup>3</sup> Education Act Section 2-4, paragraphs 1-3.

report concluded, *inter alia*, that a limited exemption would in principle be compatible with Norway's international legal obligations, provided that a system for practicing the exemption could be devised within the limits imposed by the conventions. Final conclusions would depend on the further process of establishing the legal framework for the CKREE subject, and the way the subject was taught in schools.

9.4 In response, the Ministry of Education proposed further amendments to the 1996 Education Act. The Act came into force on 1 July 1997. The right to exemption was limited to those parts of the instruction that are perceived by parents as being the practice of another religion or adherence to another philosophy of life.

9.5 The State party considers the rights of parents under article 18, paragraph 4, to be the core issue of the case. Their claim is based on their allegation that the CKREE subject amounts to "*both preaching and indoctrinating*" and that it is "*neither objective, pluralistic or neutral*", combined with the fact that the 1998 Education Act does not allow for full exemption. The State party submits that the CKREE subject is in conformity with the Covenant. However, the applicable law, regulations or instructions may be incorrectly applied in individual cases. Some teachers may include themes or choose words for their instruction that may be found indoctrinating or that particular schools or municipalities may practice the exemption clause in a manner that is inconsistent with the Act and the secondary legislation.

9.6 Parents who perceive the teaching as indoctrinating and do not obtain an exemption have several avenues of redress. Firstly, a decision not to allow for exemption may be subjected to administrative and/or judicial review. Secondly, claims of alleged human rights violations may be brought before the courts. The authors in the present case did not specify when or how their children were exposed to indoctrinating instruction for which they in vain have sought exemption as provided by the Act. As far as the State party is aware, none of the authors have had requests for partial exemption rejected, and certainly, no rejections have been brought before the domestic courts for judicial review.

9.7 The procedural choices of the authors must have consequences for the admissibility and merits of their case. The claim under article 18 should be held inadmissible because the authors have not exhausted the available and effective remedy of requesting partial exemption. Secondly, until such exemption has been sought, it cannot be established whether or not their children were compelled to participate in tuition, in violation of Covenant rights, and the authors thus cannot be considered victims of a violation of article 18. Thirdly, in the event that the communication is deemed admissible, the failure of the parents to challenge the tuition accorded to their children, must influence consideration of the merits. The Committee should limit its examination to the general issue of whether or not, in the absence of a clause providing for full exemption, the CKREE subject as such violates the rights of parents. There is no basis for examining the individual teaching experiences of the authors' children.

9.8 As to the authors' references to the textbooks, the State party points out that the textbooks are not defined as part of the subject's legal framework. The Act and secondary regulations confer discretion on the schools with regard to which and to what extent textbooks are to be used as part of the instruction. Nevertheless, should the Committee examine the particular instruction

offered to the authors' children, the authors have made scant attempts to substantiate their claim that instruction is indoctrinating, which cannot be sufficient to sustain a finding of a violation. It should also be noted that the State party reported on the new CKREE subject in its fourth periodic report to the Committee, and that the Committee, in its, concluding observations, did not express concern regarding the subject's compatibility with the Covenant.

9.9 The State party submits that from General Comment No. 22 on article 18, and the Committee's decision in *Hartikainen et al. v. Finland*<sup>4</sup>, can be inferred that article 18, paragraph 4, does not prohibit compulsory school instruction on issues of religion and philosophies of life, provided that the instruction is given in a neutral and objective way.

9.10 The State party contends that religious instruction imparted in a neutral and objective way complies with other human rights standards, such as the CESCRC, and the CRC. Accordingly, article 18, paragraph 1 cannot bar compulsory education which is intended to "*enable all persons to participate effectively in a free society, [and] promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups*" (CESCRC article 13, paragraph 1) or to develop respect for "*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*" (CRC art 29, paragraph 1(c)). The CKREE is designed to promote understanding, tolerance and respect among pupils of different backgrounds, and to develop respect and understanding for one's own identity, the national history and values of Norway, as well as for other religions and philosophies of life.

9.11 The State party invokes the practice under article 2 of the Protocol No.1 to the European Convention on Human Rights, which includes the State party's obligation to respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions. Reference is made to relevant jurisprudence of the ECHR.

9.12 The State party argues that the Committee's approach in the present case should be two-fold. Firstly, the Committee should examine whether or not the CKREE subject in general involves the imparting of information and knowledge in a manner that is not objective and neutral. Secondly, with regard to elements of the subject that do not meet those standards, it should examine whether or not sufficient provision has been made for non-discriminatory exemptions or alternatives that would accommodate the wishes of the parents.

9.13 With regard to the first issue, it is submitted that the CKREE subject involves only a few activities that may be perceived as being of a religious nature. Until 1997, knowledge of Christianity was taught as an independent subject in Norwegian schools. In 1997, the government introduced the CKREE subject in order to combat prejudices and discrimination, and to cater for mutual respect and tolerance between different groups religions and life stances as well as a better understanding of one's background and identity. Another explicit aim was to contribute to the enhancement of a collective cultural identity. The achievement of these goals requires that members of different groups jointly participate in the instruction. Consequently, the

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<sup>4</sup> Communication No 40/1978, Views adopted on 9 April 1981.

CKREE subject could not function in accordance with its purpose if full exemption from the subject was readily available to everyone.

9.14 Children are not required to attend public schools. It is possible for, i.e. the NHA or the authors, to establish private schools. This is a realistic and viable alternative also as regards economic risk, as the government carries more than 85 % of all expenditures related to the operation and functioning of private schools.

9.15 With regard to the authors' allegation that instruction in Christianity involves more time than instruction of other religions and philosophies of life, it is submitted that instruction in Christianity in itself cannot cause concerns under the Covenant, as long as the instruction is carried out in an objective and neutral manner. Reference is also made to a pertinent decision of the European Commission of Human Rights.

9.16 In response to the authors' challenge of the so-called "*Christian object clause*"<sup>5</sup> in section 1-2, paragraph 1, of the Education Act, the State party submits that, according to the Christian object clause itself, it shall only apply "*in agreement and cooperation with the home*". Also, under section 3 of the Norwegian Human Rights Act, section 1-2 of the Education Act must be interpreted and applied in accordance with international human rights treaties that have been incorporated into domestic law (ICCPR, CESCR and ECHR). Consequently, the Christian object clause does not authorize preaching or indoctrination in Norwegian schools. This was the conclusion of the Supreme Court in the authors' case.

9.17 On the second issue, it is submitted that sufficient measures were taken to provide exemptions and/or alternatives to accommodate all parents with regard to activities that may be perceived as being of a religious nature. This solution was designed to meet the competing interests of recognizing the parents' right to secure their children's education in conformity with their own religious and philosophical convictions, while also acknowledging that society had a legitimate interest in enhancing mutual respect, understanding and tolerance between pupils of different backgrounds.

9.18 The most important mechanism is the provision<sup>6</sup> which allows for exemption from parts of the courses that were perceived as being the practice of another religion or philosophy of life, on the basis of written notification from concerned parents. The travaux préparatoires lay down further guidelines for allowing such exemption. Activities that allow for exemption are grouped in two different categories. Firstly, exemption shall be granted when requested for activities that clearly may be perceived to be of a religious nature. For such activities, parents are under no obligation to give reasons for their requests. In 2001, the Ministry simplified the exemption procedure by developing a notification form that may be used to claim exemption from eight different, specific activities, e.g. learning by heart of prayers, declarations of faith and religious texts, singing of religious hymns, attendance of religious service, excursions to churches, production of religious illustrations, active or passive roles in religious dramatizations, and receiving holy scripts as gifts and taking part in events in this context. Parents may claim

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<sup>5</sup> See footnote no. 1 above.

<sup>6</sup> Education Act, Section 2-4, paragraph 4.

exemptions from these activities by simply ticking off boxes for the relevant religion(s). Secondly, exemption may be granted from other activities, provided that they may reasonably be perceived as being the practice of another religion or adherence to another philosophy of life. For these cases, parents must present brief reasons for their request to enable the schools to consider whether the activity may reasonably be perceived as the practice of another religion or adherence to another life philosophy.

9.19 The second mechanism intended to remedy problems encountered on the basis of parents' religious or philosophical convictions involves flexibility in teaching, to the extent possible, and in accordance with the pupils' background.

9.20 On the alleged violation of article 26, the State party submits that to impose general obligations or rules, while at the same time allowing for exemptions provided that specific criteria are fulfilled, is an effective and admissible way of governing, and does not contravene article 26. Such methods of governing will, invariably, require that the citizens themselves consider whether they fulfil the requirements for exemption, and that they must duly apply for exemption, in the manner and within the time limits posed, and the State party does not consider such legal regimes to be discriminatory. The exemption clause does not distinguish between Christians and non-Christians.

9.21 In any event, the obligations imposed by the exemption clause cannot be considered disproportionate or unreasonable. Requests for exemption need not be justified by the parents in cases where the activities clearly may be perceived to be of a religious nature. General Comment No. 22, paragraph 6, of the Committee appears to accept systems in which the general rule is that children must participate in school courses, with the possibility for exemption from instruction in a particular religion. Other subjects, such as history, music, physical education and social studies, may also give rise to religious or ethical issues, and the exemption clause therefore applies to all subjects. The State party considers that the only viable system both for those subjects and for the CKREE subject is to allow for partial exemptions. If that was deemed discrimination, article 26 would make most compulsory education impossible to carry out.

9.22 As to the alleged violation of article 17 on the ground that parents applying for partial exemption "must reveal elements of their life stance and beliefs to school officers and staff", the State party submits that parents only have to give reasons for activities that do not obviously appear to be the practice of a specific religion or adherence to a different philosophy of life. Where reasons have to be given, parents are not required to provide information on their own religion or philosophical convictions. School employees are under a strict duty of secrecy with regard to the knowledge they obtain about personal affairs of individuals.<sup>7</sup> If the Committee were to find that the requirement for reasons in certain cases constitutes an interference with the privacy of the authors, the State party argues that the interference neither is unlawful or arbitrary.

9.23 On the "lawfulness" of the interference, the State party notes that the obligation for parents to give reasons in certain cases is spelled out in section 2-4 of the Education Act. As to the notion of arbitrariness, the State party refers to the Committee's General Comment No.16,

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<sup>7</sup> Public Administration Act (1967), Section 13.

paragraph 4, and to the positive interests that the CKREE subject pursues, and submits that the partial exemption clause must be considered both reasonable and proportionate. Reference is made to the parallel of conscientious objection to compulsory military service, where conscientious objectors must give far more elaborate and more personal reasons for their requests than parents requesting exemptions from the CKREE subject, yet these systems have been accepted by international human rights bodies.

### **The authors' comments on admissibility and merits**

10.1 On 6 and 27 April 2004, the authors commented on the State party submissions and withdraw their claim under article 27. They submit that the issue of whether or not the CKREE subject constitutes a violation of Covenant rights, must be seen in the broader context of a society with Christian predominance, as Norway has a state religion, a state church, constitutional prerogatives for the Christian faith, a Christian intention clause for public schools and pre-schools, state church priests in the armed forces, prisons, universities and hospitals, etc. Still, the right to freedom of religion for non-Christians has been taken care of in different ways, i.a., by an exemption arrangement from the Christian knowledge subject in public schools. The right to general exemption, practiced for more than 150 years, was eliminated when the CKREE subject was introduced in 1997.

10.2 On admissibility, the authors submit that the children were not formal plaintiffs before domestic courts because Norwegian civil procedure is based on the recognition of parents as legal representatives of their minor children. Had the children been formal plaintiffs, they would still have been represented by their parents and the factual context would have been the same as in this case. The children thus have no further domestic remedy.

10.3 While other sets of parents have lodged similar complaints with the ECHR, this cannot be considered as "*the same matter*" as the present case being examined "*under another procedure of international ...settlement*", within the meaning of article 5, paragraph 2 (a), of the Optional Protocol. Reference is made to relevant jurisprudence of the Committee<sup>8</sup>, which holds that if different individuals send their complaints to different international bodies, the complaints are not considered as the "same matter". The Norwegian civil procedure allows different parties to join in a common law suit. Before domestic courts, each author's case was presented separately. The claims concerned separate administrative decisions on the respective party's application for full exemption from the CKREE tuition. The fact that the NHA was recognized as a formal party before the lower courts, but denied such status before the Supreme Court, indicates that the Supreme Court considered the parents' separate claims.

10.4 The parents who were parties to the domestic court proceedings are all individuals, and have a right to decide which international body to complain to. That they share the same life stance and membership in a life stance organisation does not change this situation. The communications before the Human Rights Committee and the ECHR are therefore not the "same matter".

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<sup>8</sup> *Fanali v. Italy* (75/1980), Views adopted on 31 March 1983, and *Blom v. Sweden* (191/1985), Views adopted on 4 April 1988.

10.5 On the State party's claim that they did not exhaust domestic remedies because they did not apply for partial exemption, the authors submit that two of them actually applied for partial exemption but that they reverted to an application for full exemption when they realized that the partial exemption arrangement did not protect their children from religious influence, and was perceived by them and the children to be stigmatising. The partial exemption arrangement provides for exemptions from certain activities but not from certain knowledge. Consequently, the pupils may be exempted from praying but not from knowing the prayer. Accordingly, the authors claim that their right to full exemption is protected by the Covenant, and the State party's argument that they should have applied for partial exemption is dismissed as irrelevant.

10.6 On the State party's contention that their claim under article 26 is unsubstantiated, the authors reaffirm that non-Christians are discriminated against in that they have to give reasons for why they seek exemption from CKREE, whereas Christians are subjected to no such requirements since the CKREE subject is first and foremost designed for them. The Committee already characterized the Norwegian school system on education in religion as discriminatory (before the introduction of the CKREE subject in 1997). The new exemption arrangements are more discriminatory than the former system, since the former system only required that those applying for exemption stated whether or not they were members of the state church. After proceedings in the Supreme court, the State party introduced a standard form of notification of partial exemption from CKREE. This fact, however, is not relevant to the present case, and does not change the authors' view on the partial exemption procedure.

10.7 In response to the State party's argument that all claims in the present case have been carefully examined, the authors note that the Supreme Court chose not to examine the parents' substantial claims and approached the legal questions in a very general way.

10.8 The authors challenge the State party's legalistic approach to the question of a Covenant violation, since the practice of the law, that is the actual tuition and practice of the exemption, is the key to the question of whether or not there has been a Covenant violation. The government appointed two research institutions to examine how the CKREE subject and in particular the partial exemption procedure worked in practice. One of them (Diaforsk) concluded that *the exemption arrangement did not function in a way that sufficiently protected the rights of parents in practice*. The press release from the Ministry of Church, Education and Research stated that *both investigations concluded that the partial exemption arrangement did not operate as planned and should therefore be reviewed*. Both research institutions recommended the introduction of a general right to exemption.

10.9 The authors consider that the CKREE subject itself constitutes a breach of their right to decide on their children's life stance education, and that a possible partial exemption in their cases would have encompassed such a great part of the subject that it would have exceeded the 50% limit indicated in the *travaux préparatoires*. Partial exemption arrangements do not secure these parental rights, as those parts of tuition that may be exempted from, still are imparted to the student.

10.10 As admitted by the government, the textbooks contain segments that may be conceived as professing Christianity. Although the textbooks are not defined as part of the subject's legal

framework, they have been controlled and authorized by an official state agency, they have official status, and are used by 62% of Norwegian schools

10.11 The State party admits that at least parts of the CKREE tuition can be perceived as being of religious nature, but it does not comment on whether this fact implies that these parts of the education are inconsistent with the “*neutral and objective*” standard. The authors consider that a distinction between the parts that are of religious nature and those that are not cannot be made and that it has not even been attempted. Reference is made to the research results of the Diaforsk Institute, where it is stated that: “*We asked the teachers how they practiced this distinction in the tuition situation. Very few teachers understood what we meant by the question.*” One of the CKREE goals, i.e. that of having all pupils to join in the tuition situation, is clearly contrary to the State party’s argument that one has the freedom to choose private schooling for children from humanist homes. If humanists were to establish their own school, their children would not be gathered in the same tuition situation as other children.

10.12 The CKREE subject’s emphasize on Christianity can be further illustrated by the *travaux préparatoires*, where the Education Committee stated: “*The majority underline[s] that the tuition is not neutral in value. That the instruction shall not be of a preaching character, must never be interpreted in the way that it should be practised in a religious/moral vacuum. All instruction and upbringing in our primary school shall have the starting point in the intention clause for the school, in this subject Christianity and the different religions and life stances should be present according to their particular character. The main emphasis of the subject is the instruction on Christianity.*”

10.13 It is argued that the CKREE’s discrimination of non-Christians is disproportionate and unreasonable since it was not necessary for the State party to abolish the previous arrangement, and that the purpose of bringing pupils together “*in order to combat prejudices and discrimination*”, and other laudable intentions, could have been achieved by other arrangements than forcing everyone to take part in a subject predominantly designed for Christian upbringing.

#### **Additional information by the State party**

11.1 On 4 October 2004, the State party submitted additional observations on the admissibility and merits of the communication<sup>9</sup>. As to the admissibility of the communication, the State party reiterates its observations submitted earlier (27 April 2004). On the merits, the State party reiterates that the Supreme Court had carefully assessed the case and concluded that the CKREE subject and its partial exemption clause was in full compliance with international human rights; Article 18 of the Covenant does not prohibit mandatory school instruction on issues of religion and philosophies of life, provided it is carried out in a pluralistic, neutral and objective way; Both the ICESCR (International Covenant on Economic, Social and Cultural Rights) and the Convention on the Rights of the Child impose positive obligations on the States parties to

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<sup>9</sup> The State party provides the English translation of Circular F-03-98 (12 January 1998) and excerpts of Recommendation no. 15 for 1995-96 from the Education Committee from the Storting (the Norwegian Parliament).

provide education with certain social and ethical dimensions; and the parents failed to challenge the specific tuition accorded to their children.

11.2 More specifically, the State party refers to the authors' main objection that by virtue of teaching of the CRKEE subject, their children may receive information that amounts to indoctrination. In order to avoid a violation of article 18, paragraph 4, they requested a full exemption of the CKREE. The State party considers unnecessary a full exemption as the subject is multidisciplinary, with components of social science, world religions, philosophy and ethics, in addition to Christian knowledge.

11.3 In respect to the authors' submissions, the State party contends that the CKREE was thoroughly evaluated and two independent reports were commissioned and considered in the 2000-2001 Report of the Ministry of Education to the Storting. The Supreme Court examined the reports and their administrative follow-up what constitutes, of the State party's opinion, the proof that the Court was fully aware of all aspects of the case when concluding that the CKREE subject was in conformity with international human rights covenants. The concluding remarks of the evaluation reports indicated that in the majority of the cases, partial exemptions operated satisfactorily, most parents found that the CKREE worked well for their children and that few teachers perceived partial exemption as source of practical problems.

11.4 With regard to the authors' allegation that the State party ignored warnings from different religious groups, human rights law body and the judge Mose's recommendation, it is stated that there was no unified position against the introduction of the CKREE subject in school, that religious minority groups participated in drawing up the new teaching plan approved by Parliament, and that at present there was a little, if any, disagreement on the exemption clause of the CKREE.

11.5 The State party further refers to the authors' commentary on the limited relevance of the ECHR case of *Kjeldsen, Busk Madsen and Pedersen v. Denmark*<sup>10</sup> to the present case, because it related to mandatory sex education and not religious education.

11.6 The State party points out, with respect to the authors' allegations that in its observations the Committee of the Rights of the Child expressed concern of "the process of providing for exemptions", without giving the reasons for its concern. Since the adoption of the above observations (2 June 2000), the CKREE subject and its exemption process have been thoroughly evaluated and the authorities acted on concerns raised by granting exemptions upon standardized notification and by facilitating the communications between schools and homes. Finally, the State party notes that the Committee did not object to a partial exemption scheme, nor supported the authors' claims for a full exemption.

11.7 The State party affirms that many subjects taught at school may include information or actions perceived to have philosophical or religious aspects. It notes that in the present case, the authors of the communication were not concerned by subjects such as science, music, physical education and home economics, but that there were religious minorities that refused to take

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<sup>10</sup> European Court for Human Rights, applications nos 5095/71, 5920/72 and 5926/72.

partially part to these subjects, i.e. to the practical aspects of physical education and music. The State party affirms that a partial exemption clause is, in general and in respect to CKREE in particular, the only viable way of carrying out mandatory education.

11.8 As to the issue of discrimination, the State party notes that the authors' appear to have misapprehended its observations, by taking out the words "do not" from the following sentence: "In particular, States parties must be at liberty to demand that parents provide grounds when applying for exemption from activities that do not immediately appear to be practice of a specific religion or adherence to a different philosophy of life". The State party reiterates that following the 2000-2001 evaluation of the CKREE subject, a general notification form replaced the former application procedure.

11.9 Finally, with reference to the latest international developments, the State party affirms that intercultural and inter-religious dialogue should be encouraged as an integrated part to the children education. According to it, in this context, the CKREE subject appears to be a vital tool in promoting "a common playing field for an increasingly multicultural and diverse generation".

#### **Additional information by the authors**

12.1 By letter of 15 October 2004, the authors filed additional observations on State party's latest submission. They re-emphasize that they oppose CKREE because it is not a subject that involves neutral information on different life stances and religions. CKREE involves direct and undisputed religious activities (such as prayers). According to the authors', the CKREE syllabus, combined with the Christian intention clause belies the ratio legis invoked by the State party. The authors do not oppose education with certain "social and ethical" dimensions, but the CKREE methodology was to strengthen the students' religious identity and to teach religious activity within the framework of the Christian intention clause.

12.2 The authors affirm that even if partial exemption arrangements were satisfactory in the majority of cases and only few teachers faced practical problems, this is irrelevant to the present case. The crucial point in the present case is that minority students and their parents experienced the system quite differently.

12.3 The authors contest the State party's objection on the absence of broader opposition to the introduction of the CKREE and argue that practically all religious and life stance minority groups in Norway opposed the subject. They add that the Islamic Council and Muslim parents of Norway filed a law suit against the Government, more or less corresponding to their own case, and that they lost their case on grounds similar to the authors' case. It is stated that the Council had decided to await the outcome of the authors' communication before taking any further legal action.

12.4 It is pointed out that large groups of Norwegian society continue to have problems with the partial exemption arrangement. The authors submit a copy of a report prepared in June 2004 by the Norwegian Forum for the Convention of the Rights of the Child, where it invited the CRC to recommend the State party to review its "religious and ethical education both in the state school

system and with regard to the requirements for and inspection of private schools, in relation to the CRC's stipulations on freedom of thought, conscience and religion".

12.5 Finally, the authors support the continued promotion of the intercultural dialogue, but affirm that the CKREE does not fulfil this aim.

## **Issues and proceedings before the Committee**

### **Consideration of admissibility**

13.1 Before considering any claim contained in a communication, the Human Rights Committee must, in accordance with rule 87 of its rules of procedure, decide whether or not it is admissible under the Optional Protocol.

13.2 The Committee has noted the State party's challenge to the admissibility of the communication on the grounds that the authors would not be "victims" of an alleged human rights violation in the meaning of article 1 of the Optional Protocol. In the Committee's opinion, the authors have shown that they are affected, individually and as families, of the State party's law and practice. Consequently, the Committee finds no reason to declare the communication inadmissible on this ground.

13.3 The State party has contested the admissibility also on the ground that the "same matter" is already being examined by the ECHR as three other sets of parents have lodged a similar complaint with the ECHR and that before the Norwegian courts, the authors' claims for full exemption from the CKREE subject were adjudicated in a single case, along with identical claims from these three other sets of parents. The Committee reiterates its jurisprudence that the words "*the same matter*" within the meaning of article 5, paragraph 2 (a), of the Optional Protocol, must be understood as referring to one and the same claim concerning the same individual, as submitted by that individual, or by some other person empowered to act on his behalf, to the other international body<sup>11</sup>. That the authors' claims were joined with the claims of another set of individuals before the domestic courts does not obviate or change the interpretation of the Optional Protocol. The authors have demonstrated that they are individuals distinct from those of the three sets of parents that filed a complaint with the ECHR. The authors in the present communication chose not to submit their cases to the ECHR. The Committee, therefore, considers that it is not precluded under article 5, paragraph 2 a), of the Optional Protocol from considering the communication.

13.4 The Committee has taken note of the State party's argument that the claims under articles 17 and 18 were not raised in domestic proceedings, since the authors did not avail themselves of the possibility of applying for partial exemption, and that domestic remedies were not exhausted in that respect. However, both before the Committee and the domestic courts, the authors' claimed that the compulsory nature of the CKREE subject violates their Covenant rights, since cannot apply for full exemption from it. Furthermore, the State party has explicitly confirmed that the claims made in the communication were already assessed by domestic courts. The

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<sup>11</sup> *Sanchez Lopez v. Spain*, (777/1997), Decision adopted on 22 October 1996.

Committee considers that the authors have exhausted domestic remedies in relation to the claim in question.

13.5 The State party challenged the admissibility of the authors' claim under article 26 because of non-substantiation, since the exemption clause under the Norwegian Education Act applies to all parents, regardless of their religion or life stance. The Committee does not share this view. Consideration of whether there has been a differentiation between Christians and other groups, and whether such differentiation is based on objective and reasonable criteria, would be part of the merits consideration. The Committee considers that the authors have sufficiently demonstrated, for purposes of admissibility, that the exemption arrangements applicable to the CKREE subject may differentiate between non-Christian parents and Christian parents and that such differentiation may amount to discrimination within the meaning of article 26.

13.6 Noting that the authors have withdrawn their claim presented under article 27, the Committee decides that the communication is admissible insofar as it raises issues under articles 17, 18, and 26, of the Covenant.

### **Consideration of the merits**

14.1 The Human Rights Committee has considered the present communication in the light of all the information made available to it by the parties, as provided in article 5, paragraph 1 of the Optional Protocol.

14.2 The main issue before the Committee is whether the compulsory instruction of the CKREE subject in Norwegian schools, with only limited possibility of exemption, violates the authors' right to freedom of thought, conscience and religion under article 18 and more specifically the right of parents to secure the religious and moral education of their children in conformity with their own convictions, pursuant to article 18, paragraph 4. The scope of article 18 covers not only protection of traditional religions, but also philosophies of life<sup>12</sup>, such as those held by the authors. Instruction in religion and ethics may in the Committee's view be in compliance with article 18, if carried out under the terms expressed in the Committee's General Comment No. 22 on article 18: "[A]rticle 18.4 permits public school instruction in subjects such as the general history of religions and ethics if it is given in a neutral and objective way", and "public education that includes instruction in a particular religion or belief is inconsistent with article 18, paragraph 4 unless provision is made for non-discriminatory exemptions or alternatives that would accommodate the wishes of parents or guardians." The Committee also recalls its Views in *Hartikainen et al. v. Finland*, where it concluded that instruction in a religious context should respect the convictions of parents and guardians who do not believe in any religion. It is within this legal context that the Committee will examine the claim.

14.3 Firstly, the Committee will examine the question of whether or not the instruction of the CKREE subject is imparted in a neutral and objective way. On this issue, the Education Act, section 2-4, stipulates that: "*Teaching on the subject shall not involve preaching. Teachers of Christian Knowledge and Religious and Ethical Education shall take as their point of departure*

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<sup>12</sup> General Comment No. 22 on article 18, adopted on 30 July 1993.

*the object clause of the primary and lower secondary school laid down in section 1-2, and present Christianity, other religions and philosophies of life on the basis of their distinctive characteristics. Teaching of the different topics shall be founded on the same educational principles*". In the object clause in question it is prescribed that the object of primary and lower secondary education shall be "in agreement and cooperation with the home, to help to give pupils a Christian and moral upbringing". Some of the *travaux préparatoires* of the Act referred to above make it clear that the subject gives priority to tenets of Christianity over other religions and philosophies of life. In that context, the Standing Committee on Education concluded, in its majority, that: *the tuition was not neutral in value, and that the main emphasis of the subject was instruction on Christianity*. The State party acknowledges that the subject has elements that may be perceived as being of a religious nature, these being the activities exemption from which is granted without the parents having to give reasons. Indeed, at least some of the activities in question involve, on their face, not just education in religious knowledge, but the actual practice of a particular religion (see para 9.18). It also transpires from the research results invoked by the authors, and from their personal experience that the subject has elements that are not perceived by them as being imparted in a neutral and objective way. The Committee concludes that the teaching of CKREE cannot be said to meet the requirement of being delivered in a neutral and objective way, unless the system of exemption in fact leads to a situation where the teaching provided to those children and families opting for such exemption will be neutral and objective.

14.4 The second question to be examined thus is whether the partial exemption arrangements and other avenues provide "*for non-discriminatory exemptions or alternatives that would accommodate the wishes of parents or guardians.*" The Committee notes the authors' contention that the partial exemption arrangements do not satisfy their needs, since teaching of the CKREE subject leans too heavily towards religious instruction, and that partial exemption is impossible to implement in practice. Furthermore, the Committee notes that the Norwegian Education Act provides that "on the basis of written notification from parents, pupils shall be exempted from attending those parts of the teaching at the individual school that they, on the basis of their own religion or philosophy of life, perceive as being the practice of another religion or adherence to another philosophy of life".

14.5 The Committee notes that the existing normative framework related to the teaching of the CKREE subject contains internal tensions or even contradictions. On the one hand, the Constitution and the object clause in the Education Act contain a clear preference for Christianity as compared to the role of other religions and worldviews in the educational system. On the other hand, the specific clause on exemptions in Section 2-4 of the Education Act is formulated in a way that in theory appears to give a full right of exemption from any part of the CKREE subject that individual pupils or parents perceive as being the practice of another religion or adherence to another philosophy of life. If this clause could be implemented in a way that addresses the preference reflected in the Constitution and the object clause of the Education Act, this could arguably be considered as complying with article 18 of the Covenant.

14.6 The Committee considers, however, that even in the abstract, the present system of partial exemption imposes a considerable burden on persons in the position of the authors, insofar as it requires them to acquaint themselves with those aspects of the subject which are clearly of a

religious nature, as well as with other aspects, with a view to determining which of the other aspects they may feel a need to seek – and justify – exemption from. Nor would it be implausible to expect that such persons would be deterred from exercising that right, insofar as a regime of partial exemption could create problems for children which are different from those that may be present in a total exemption scheme. Indeed as the experience of the authors demonstrates, the system of exemptions does not currently protect the liberty of parents to ensure that the religious and moral education of their children is in conformity with their own convictions. In this respect, the Committee notes that the CKREE subject combines education on religious knowledge with practising a particular religious belief, e.g. learning by heart of prayers, singing religious hymns or attendance at religious services (para 9.18). While it is true that in these cases parents may claim exemption from these activities by ticking a box on a form, the CKREE scheme does not ensure that education of religious knowledge and religious practice are separated in a way that makes the exemption scheme practicable.

14.7 In the Committee's view, the difficulties encountered by the authors, in particular the fact that Maria Jansen and Pia Suzanne Orning had to recite religious texts in the context of a Christmas celebration although they were enrolled in the exemption scheme, as well as the loyalty conflicts experienced by the children, amply illustrate these difficulties. Furthermore, the requirement to give reasons for exempting children from lessons focusing on imparting religious knowledge and the absence of clear indications as to what kind of reasons would be accepted creates a further obstacle for parents who seek to ensure that their children are not exposed to certain religious ideas. In the Committee's view, the present framework of CKREE, including the current regime of exemptions, as it has been implemented in respect of the authors, constitutes a violation of article 18, paragraph 4, of the Covenant in their respect.

14.8 In view of the above finding, the Committee is of the opinion that no additional issue arises for its consideration under other parts of article 18, or articles 17 and 26 of the Covenant.

15. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the facts before it disclose a violation of article 18, paragraph 4, of the Covenant.

16. In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide the authors with an effective and appropriate remedy that will respect the right of the authors as parents to ensure and as pupils to receive an education that is in conformity with their own convictions. The State party is under an obligation to avoid similar violations in the future.

17. Bearing in mind that, by becoming a State party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant or not and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and enforceable remedy in case a violation has been established, the Committee wishes to receive from the State party, within ninety days, information about the measures taken to give effect to the Committee's Views. The State party is also requested to publish the Committee's Views.

[Adopted in English, French and Spanish, the English text being the original version. Subsequently to be issued also in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]

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