



RESOURCES

• Human Identity •

HUMAN RIGHTS AND EDUCATION

WHAT ARE THE RIGHTS OF
PARENTS, CHILDREN AND
TEACHERS WHEN THEY
OBJECT TO PARTS OF THE
CURRICULUM?

This paper has been commissioned by EEA

2017

European Evangelical Alliance

office@europeanea.org

|

www.europeanea.org

This briefing gives advice for those who think that some school lessons, most likely to be on religion or sex and gender issues, clash with their beliefs. It shows how international human rights law goes a long way in defending parents, students and educators who feel that the education curriculum clashes with their freedom of conscience. These freedom of conscience rights are for all with firmly held moral beliefs, whether religious or secular. However, there are limits to these rights. And, in some European nations, ideology is getting in the way of rights.

International Human Rights Law

The European Convention on Human Rights in Article 9 guarantees **freedom of thought, conscience and religion or belief, in public as well as private**¹. Grounds to restrict this right are limited and need to meet specific criteria.

No one has the right, for example, to bully someone because of their faith or sexuality. Furthermore, the following do not appear to reach the standard of what should be limited (provided they are based on firmly held convictions):

1. Students respectfully refusing to attend a certain class which violates their beliefs
2. Teachers respectfully refusing to teach certain lessons which violates their beliefs

Additionally, Article 2, Protocol 1 of the European Convention gives parents the **right to ensure that education of their children fits with their religious or philosophical convictions**².³ The European Court of Human Rights has judged that this is not quite such a general right as it seems but its wording implies that it should protect parents who respectfully refuse to send their child to a certain class which violates their beliefs.

The Council of Europe's Parliamentary Assembly has agreed that there should be "**reasonable accommodation of religious beliefs and practices**"⁴. This means there should be sensible discussion and solution finding so that, for example, it is easy for a parent to take their child out of a particular class. This resolution goes on to argue **for freedom of conscience in the workplace, for example, for teachers**. It is logical that one could argue this same right for **schools with a particular belief ethos**. (E.g. Christian

¹ **Article 9 – Freedom of thought, conscience and religion.** Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.

² **Article 2 of Protocol No. 1 – Right to education.** No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.

³ **The European Union Charter of Fundamental Rights' Article 14** is very similar.

⁴ [Resolution 2036 \(2015\)](#) on **Tackling intolerance and discrimination in Europe with a special focus on Christians**. See Article 2 and 6.2

schools, with a clearly stated and practiced faith ethos, should have a better chance to guarantee that Christian teachers, parents and children will have a curriculum that is according to their deeply held beliefs.) A Council of Europe resolution does not have the strength of a law but, if ever a case goes to the European Court of Human Rights, the European judges will bear them in mind.

Recently, the Council of Europe passed another text saying no one should be compelled to perform actions that go against their moral or religious beliefs. It also called for “**easy-to-implement options for children or parents to obtain exemptions from compulsory State religious education programmes** that are in conflict with their deeply held moral or religious beliefs.”⁵ And the Council of Europe has also urged **freedom of choice in education** and stressed the importance of State neutrality and pluralism⁶.

Can parents be forced to send their children to private schools if they do not like part of the State school curriculum? The European Court of Human Rights has normally judged no, saying that a State must always safeguard pluralism of the entire school curriculum⁷. However, in a Spanish case, it said that private schooling was an acceptable alternative⁸. This is presumably because it is very easy in Spain to access private education⁹.

What else must the State do in its schools? It must

Never indoctrinate or proselytise in any part of the curriculum¹⁰,

Respect the beliefs of parents (who are the primary educators) and not force them to divulge their convictions in detail¹¹.

Provide lessons that are objective, critical and pluralistic. If this is done, then they can insist on attendance (but not otherwise). If the teaching is information of a general character and not in any way an attempt at indoctrination, then a school can require a child to attend^{12,13}.

Provide simple ways for children to opt out of certain classes. This cannot include requiring the child to still sit in the classroom, observing passively¹⁴.

The European Court upheld the Spanish government’s right to impose compulsory sex education because the classes supposedly provided objective and scientific information, did not attempt to indoctrinate regarding certain sexual behaviour, and did not impede on the parents’ right to raise their children in light of their religious or philosophical convictions. Parents may disagree over how much

⁵ Resolution 2163 (2017) on **The protection of the rights of parents and children belonging to religious minorities**. See article 5, especial 5.4.

⁶ Resolution 1904 (2012) on **The right to freedom of choice in education in Europe**. See especially Article 4.1.

⁷ <http://hudoc.echr.coe.int/eng?i=001-81356> *Folgerø & Others v. Norway*.

⁸ <http://hudoc.echr.coe.int/eng?i=001-5973> *Jimenez Alonso & Jimenez Merino v. Spain*.

⁹ The European Court of Human Rights always bears in mind national circumstances and indeed culture which is why judgements are not always consistent.

¹⁰ See <http://hudoc.echr.coe.int/eng?i=001-81356> *Folgerø & Others v. Norway*. &

<http://hudoc.echr.coe.int/eng?i=001-57509> *Kjeldsen, Busk Madsen & Pedersen v Denmark*

¹¹ See footnote 10.

¹² See footnotes 7 & 8.

¹³ <http://hudoc.echr.coe.int/eng?i=001-57509> *Kjeldsen, Busk Madsen & Pedersen v Denmark*. The parents had objected to compulsory sex education for their children. They lost the case because... Para.164 “The purpose of sex education as conducted in Danish schools is to give the children objective information of biological and other facts of human life. It is true that such teaching will bring up questions of ethics and morals. But from the relevant Danish laws it becomes clear - that the purpose of them is not to provide an education aimed at imposing a certain morality (or lack of morality, as it has been said) upon the children. Nothing in the legislation indicates that the education should indoctrinate children in any way, for example, by teaching that extra-marital sex should be considered neither moral nor immoral.”

¹⁴ See footnote 7.

factual information they want given to their children. However, the Court is saying that there must be **no promotion of behaviour**.¹⁵

Of course, the difficulty is in how one defines indoctrination, respect, being objective or scientific. However, we can conclude some things from all of this. Passing on of factual information in a balanced way is deemed to be acceptable in international law, even if parents or children are not happy. **Pushing certain beliefs or behaviours and requiring participation in or observance of activities that go against a parent's or child's beliefs**¹⁶ is unacceptable. Rather, there should be respectful mention of other beliefs. So it is the precise content of the lesson that is the issue.

What about reality?

International human rights law is only part of the story. In some countries, the State pushes classes that do appear to indoctrinate and requires teachers to teach and parents and students to accept.

Generally, European nations ensure that, in religious education, children are not forced to participate in actual religious practice. However, when a child opts out of the classes that most children attend, there may still be a problem of ridicule.

There are more difficulties involving sex education.

The World Health Organisation (WHO), in collaboration with the German Federal Centre for Health Education, published detailed guidelines on sex education for Europe¹⁷. There is some good content but there is also much that would worry perhaps most parents, including beginning to learn about masturbation or LGBTI relationships for 0-4 year olds, use of contraception and orgasm for 9-12 year olds, how to access contraception for 12-15 year olds, abortion and “coming out” as LGBT for 15 year olds.

These guidelines are only that. The content of sex education classes is for nation states to decide. Some countries or regions are opting for WHO style classes, if not more. Where indoctrinating and extreme school curriculum content is not challenged by parents and civil society, then it becomes more likely that, if a court case reaches the European Court, the judges will conclude that the curriculum suits the culture of the nation.

Even so, considering the case law of the European Court of Human Rights and the Council of Europe's Parliamentary Assembly resolutions, one would expect that any curriculum content that forces a child, for example, to see pornographic imagery would be judged to be violating the rights of the parents and/or child.

Advice for parents

If you object to certain parts of the curriculum or you are concerned that you are likely to object to lesson content that will be coming up, bear in mind your rights under international law but start by clearly and calmly talking to the teacher and to the school. It will greatly help if you have already shown interest in and support for school life in general.

¹⁵ <http://hudoc.echr.coe.int/eng?i=001-5973> *Jiménez Alonso and Pilar Jiménez Merino v. Spain*

¹⁶ <http://hudoc.echr.coe.int/eng?i=001-58011> *Valsamis v. Greece*. The European Court explained that “convictions” denote “views that attain a certain level of cogency, seriousness, cohesion and importance.”

¹⁷ http://www.bzga-whocc.de/fileadmin/user_upload/WHO_BZgA_Standards_English.pdf

Ask to see the materials that will be / have been used in the class so that you know exactly what is in the lesson. Make sure you know accurate facts about what is being taught. If the school refuses to let you see the material, calmly state that the law does not allow for schools' teaching to violate the firmly held beliefs of parents, and the only way of ensuring compliance with that requirement is to allow parents to see lesson material.

Make clear which parts of the lesson you object to. Refrain from any comment on what you think about this content. It will not help to argue, for example, how immoral you think anything is. Simply state that this particular content interferes with your ability to raise your children in accordance with your deeply held beliefs. You do not have to explain exactly why this is the case.

Ask for a solution, a reasonable accommodation of your beliefs. Have ideas about what may be a good solution for you. This might be that

You ask the school to abide by its obligation to teach in an objective and pluralistic manner so ask how the lesson can be changed so that it is less indoctrinating and/or it respectfully teaches alternative viewpoints. Can you propose a Christian ministry who could come and give a positive understanding of sex and marriage from a Christian point of view?

Or you may ask that your child be able to be out of the classroom when the problematic content is being taught. Therefore, you need to know when it is to be timetabled. You also need to know that your child will be safely supervised elsewhere and that there will be no embarrassment for your child. Still sitting quietly in the same classroom is not good enough.

You may wish to share your concerns with other parents. Do not presume that it will only be parents that share your faith who may be concerned about the lessons' content. Be careful to try not to turn this into a war between parents and school because heated conflict may well make matters worse. Instead, as parents, agree your joint message to the school and what you would like to happen.

If needed, quote the legal texts in this briefing. If necessary, you may wish to get legal advice.

As this briefing points out, there is no guarantee of education that fits all that a parent would wish. In some countries, school education is compulsory, classes are compulsory and it is incredibly hard to get an exemption. However, there are limits on how much a child can be forced to participate in contentious activities.

Advice for teachers and schools

Beyond military service exemption, some level of conscientious objection rights in the workplace have been agreed by the Parliamentary Assembly of the Council of Europe¹⁸.

It is logical that these rights should be applicable to schools with a clearly publicised faith ethos.

While there has not been an international case on the rights of schools or teachers regarding conscientious objection, the European Court of Human Rights has said that conscientious objection could attract the protection of international law, so long as the belief is "of sufficient cogency, seriousness, cohesion and importance to motivate the objection", and as long as it is motivated by a:

¹⁸ See footnote 4. And <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-EN.asp?fileid=17909&lang=en> on **The right to conscientious objection in medical care.**

“serious and insurmountable conflict between the obligation [in question] and a person’s conscience or his deeply and genuinely held religious or other beliefs”¹⁹.

If a difficulty arises, then politely explain what parts of the curriculum are problematic. Refrain from making any moral or religious judgements but say that you cannot teach the content because it violates your firmly held beliefs. You do not need to explain more.

Ask for reasonable accommodation – a sensible compromise solution.

Ask that another member of staff covers this content. Unfortunately, there is no right to shield your pupils from problematic lessons.

Or suggest a more objective and pluralistic way of covering the material.

Ask for your Trade Union’s assistance. The Union representative may or may not understand your concerns but their job is to help their members and not discriminate in this on any grounds, including religion. If necessary, you may wish to get legal advice.

A school will need to argue with those that govern it why the teaching goes against their ethos and/or does not appear to be objective or pluralistic. Suggest other ways of covering the material.

¹⁹ <http://hudoc.echr.coe.int/eng?i=001-105611> *Bayatyan v. Armenia*