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International Covenant on Civil and Political Rights

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Human Rights Committee

Decision adopted by the Committee under the Optional Protocol, concerning communication No. 3183/2018*, **

Communication submitted by:	D.P. and E.P. (represented by counsel, Paul Coleman, of ADF International)
Alleged victims:	The authors and their daughter
State party:	Sweden
Date of communication:	27 July 2015 (initial submission)
Document references:	Decision taken pursuant to rule 92 of the Committee's rules of procedure, transmitted to the State party on 22 June 2018 (not issued in document form)
Date of adoption of decision:	31 October 2023
Subject matter:	Homeschooling of one's child
Procedural issue:	Admissibility – lack of sufficient substantiation
Substantive issues:	Right to education; freedom of belief; non-discrimination
Articles of the Covenant:	2 (1), 17, 18 (1), (3) and (4), 26 and 27
Articles of the Optional Protocol:	2, 3 and 5 (2) (b)

1. The authors of the communication are D.P. and E.P., dual nationals of Sweden and the United States of America born on 26 February 1979 and 11 October 1981, respectively, the parents of C.P. (aged 8 years). The authors submit the communication on their own behalf and on behalf of their minor daughter. They claim that the State party, by refusing the authors' request to homeschool their daughter, has violated their and their daughter's rights under articles 2 (1), 17, 18 (1), (3) and (4), 26 and 27 of the Covenant. The Optional Protocol entered into force for Sweden on 23 March 1976. The authors are represented by counsel.

* Adopted by the Committee at its 139th session (9 October–3 November 2023).

** The following members of the Committee participated in the examination of the communication: Tania María Abdo Rocholl, Farid Ahmadov, Wafaa Ashraf Moharram Bassim, Rodrigo A. Carazo, Yvonne Donders, Mahjoub El Haiba, Carlos Gómez Martínez, Marcia V.J. Kran, Bacre Waly Ndiaye, Hernán Quezada Cabrera, José Manuel Santos Pais, Soh Changrok, Tijana Šurlan, Kobauyah Tchamdja Kpatcha, Teraya Koji, Hélène Tigroudja and Imeru Tamerat Yigezu. Pursuant to rule 108 of the Committee's rules of procedure, Laurence R. Helfer did not participate in the examination of the communication.

Facts as submitted by the authors

2.1 The authors are a married couple and hold dual citizenship of Sweden and the United States. They have lived in Sweden for eight years and have two daughters and one son. One of their daughters, C.P., is bilingual and is also a dual citizen of those countries.

2.2 In the fourth quarter of 2013, C.P., aged 7 years at the time, was educated at home for three months during a family trip to the United States. The results were excellent. Upon her return to the first grade of school in Sweden, it appeared that C.P. had advanced so significantly in her education that she could move to a higher grade. Following consultations with teachers and the principal, it was decided that C.P. would start the second semester in the second grade. The authors' daughter hence studied with older children, continuing to be ahead of them in several subjects. The home-based education that the authors had provided had been a fully adequate alternative.

2.3 On 21 January 2014, the authors requested permission from the Child and Education Board of Nordmaling Municipality, where they lived, to educate C.P. at home. By law, all children of school age must regularly attend school. However, the law provides for alternative schooling in certain circumstances. In their request, they stated that public education could not meet their educational requirements for their daughter, which were in accordance with their philosophical and pedagogical convictions, and that they could better meet her educational needs at home.

2.4 The authors asserted their exceptional circumstances, namely, that their daughter's bilingualism and fluency in English would require individualized teaching. Since their daughter was a dual citizen and might choose in the future to live in the United States, it was important that she receive an integrated education in the language, history and culture of both Sweden and the United States.

2.5 On 29 January 2014, the Child and Education Board denied the authors' request to homeschool their daughter. Citing chapter 24, section 23, of the Education Act of 2010, the Board stated that the municipality could grant permission for an alternative education only if seen as an adequate alternative, the need for transparency could be met and exceptional circumstances were present. The Board considered that the reasons provided did not meet the requirements for granting an exception to mandatory school attendance.

2.6 On 3 March 2014, the authors appealed the decision to the Administrative Court, which denied the appeal on 1 September 2014 on the grounds that there were no exceptional circumstances present in the case and that it did not, therefore, meet the standard of the law. On 23 September 2014, they appealed to the Administrative Court of Appeal, which refused to hear the appeal on 28 October 2014.

2.7 On 1 December 2014, the authors appealed to the Supreme Administrative Court, the highest court in Sweden, which dismissed the appeal on 13 February 2015. The authors claim that no remedies are available to them to contest the decision of the Supreme Administrative Court.

2.8 The authors submit that they have exhausted all available and effective domestic remedies. Since the authors received no remedy in Sweden, they claim that they were ultimately forced to leave the country with their children in order to homeschool them in accordance with their convictions.

Complaint

3.1 The authors object to the State party's refusal to allow them to educate their daughter at home in conformity with their own philosophical and pedagogical convictions and to the subsequent negative decisions by the Swedish courts, which have violated their and their daughter's rights under articles 2 (1), 17, 18 (1), (3) and (4), 26 and 27 of the Covenant.

3.2 By prohibiting the authors to educate their daughter at home, the authors' rights under article 18 (1) of the Covenant have been violated. They were denied the freedom to adopt a belief of their choice and to manifest such belief in practice. The authors use the term "belief" to refer to their pedagogical convictions, which they consider to be philosophical beliefs, in line with the case law of the European Court of Human Rights. The authors claim to have

requested the State party to respect their conviction that their daughter would benefit from a different pedagogical philosophy, provided through homeschooling, than the school can offer; the motivation was to better balance the Swedish perspective with the American one. They also claim that homeschooling represents a direct manifestation of the pedagogical and philosophical beliefs held by the parents,[1] pursuant to general comment No. 22 (1993) on the right to freedom of thought, conscience and religion.[2] By prohibiting the authors' request for alternative education at home, the State party unjustly interfered with their freedom of religion or belief, in contradiction with article 18 (3) of the Covenant. In prohibiting homeschooling, the authorities were not pursuing any legitimate aim but, rather, were following an obtuse pedagogical understanding, according to which all students should be treated alike, despite their different needs and capabilities.

3.3 The authors further claim that their rights under article 18 (4) of the Covenant have been violated, as they were deprived of the freedom to ensure the moral education of their child in conformity with their own convictions. They also perceive the rejection of their homeschooling request as arbitrary or unlawful interference with their privacy, family and home, in violation of article 17. The authors seek control over the education of their daughter, in conformity with their convictions. They refer to *Leirvag v. Norway*,[3] in which the Committee assessed the scope and applicability of article 18 (4). While admitting that the facts of the present case differ from those in *Leirvag v. Norway*, they assert that the overarching principles are the same. Both cases involve statutory exemptions that are not adequately applied in practice.[4]

3.4 The authors claim that the Swedish authorities did not fully consider their request to homeschool their daughter or assess their convictions on the merits and that, therefore, they were discriminated against on the basis of their philosophical and pedagogical convictions, which constitute a "political or other opinion", in violation of article 26 of the Covenant. They assert that the view of the Swedish authorities is clear: they disagree with homeschooling per se and therefore do not allow it.

3.5 The authors also assert that Sweden failed to protect their right under article 27 of the Covenant as a minority, due to their distinct nationality, to enjoy their own culture. Under article 27, in the context of their fair and proper treatment, minorities are also guaranteed the right to use their own language.

3.6 The authors request the Committee to recommend that the State party take all measures necessary to provide the authors with appropriate remedies, in accordance with article 2 (3) of the Covenant, including by examining the merits of their case and by granting permission for them to practise their pedagogical beliefs by homeschooling their daughter to ensure that she receives adequate instruction in one of her own languages.

State party's observations on admissibility and the merits

4.1 On 1 February 2019, the State party submitted its observations on admissibility and the merits.

4.2 The State party holds that the complaint is inadmissible. First, the communication should be declared inadmissible as representing *actio popularis*. The authors have also failed to exhaust domestic remedies. The part of the communication relating to articles 26 and 27

[1] The authors cite *M.A. v. Italy*, communication No. 117/1981, and *Ross v. Canada* (CCPR/C/70/D/736/1997) in addition to A/HRC/4/29/Add.3, paras. 62 and 93 (g); and European Court of Human Rights, *Young, James and Webster v. United Kingdom of Great Britain and Northern Ireland*, Applications No. 7601/76 and No. 7806/77, Judgment, 13 August 1981, para. 63; and *Campbell and Cosans v. United Kingdom*, Applications No. 7511/76 and No. 7743/76, Judgment, 25 February 1982, para. 26.

[2] General comment No. 22 (1993), para. 2.

[3] CCPR/C/82/D/1155/2003.

[4] The authors, inter alia, refer to article 26 (3) of the Universal Declaration of Human Rights, article 13 (3) of the International Covenant on Economic, Social and Cultural Rights, article 2 of Protocol No. 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms, article 18 (1) and (2) of the Convention on the Rights of the Child and article 14 (3) of the Charter of Fundamental Rights of the European Union.

of the Covenant should be declared inadmissible *ratione personae*. In addition, the claims relating to articles 18 and 27 of the Covenant should be declared inadmissible *ratione materiae*. The authors' view that home education is best for their daughter does not constitute a conviction and there is no right under the Covenant to obtain education in the language of one's own choice. Furthermore, there has not been any interference with the authors' right to ensure the religious and moral education of their daughter in conformity with their own convictions nor has there been any interference with their right to manifest their view that homeschooling is best for their daughter. Moreover, the authors have not been denied the right to use their own language. The Swedish legislation and the assessment in the present case also fall within the State's margin of discretion. Finally, no differential treatment has occurred and the legislation on permission to complete compulsory schooling through homeschooling is not discriminatory nor has its application been discriminatory. In sum, the communication should be declared inadmissible as being manifestly unfounded.

4.3 On the merits, the communication reveals no violation of the authors' rights under the Covenant.

4.4 The State party recalls the facts whereby the authors' daughter was not granted permission to complete compulsory schooling through homeschooling, which the authors believe is the best educational method for her, based mainly on a desire to provide bilingual teaching to her. The authors hold that the refusal to give them permission to homeschool their daughter constituted a violation of their rights under article 18 of the Covenant to ensure the religious and moral education of their daughter in conformity with their own convictions and to manifest their beliefs. They also claim that it violated their rights under article 26 of the Covenant, viewed in the light of article 27.

4.5 The Swedish Constitution and its Instrument of Government set out that public power shall be exercised with respect for the equal worth of all and the liberty and dignity of the individual. Public institutions shall, inter alia, secure the right to education and promote the rights of the child to be safeguarded, combat discrimination on various grounds and promote the opportunities of, inter alia, linguistic minorities to preserve and develop a cultural and social life of their own. As concerns the possibility for parents to provide an education to their children in conformity with their own convictions, the Instrument of Government states that everyone is guaranteed freedom of opinion in their relations with public institutions.

4.6 The Education Act states that compulsory schooling in Sweden must be completed in compulsory school or in an alternative way. Under chapter 24, section 23, of the Education Act, children may be permitted to complete compulsory schooling in an alternative way under conditions stated in the Act. Such permission is granted if the activity is considered to be an adequate alternative to the education that would otherwise have been offered to the child under the provisions of the Act, the need for the oversight of activities can be met and there are exceptional circumstances. As stated in the *travaux préparatoires* of the Swedish legislation on homeschooling, it is clear that the education provided in schools must be comprehensive and fact-based and designed in such a way that all pupils can take part, irrespective of any religious or philosophical views that they or their caregivers may hold. It is also clear from the *travaux préparatoires* that the purpose of the requirement that pedagogy be non-religious is to ensure the kind of objective, critical and pluralistic education guaranteed by article 2 of Protocol No. 1 to the European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights). Education and teaching in Swedish compulsory school is also governed by the Curriculum for compulsory school, preschool class and recreation centres of 2011 on the basis of which all parents should be able to send their children to school, fully confident that their children will not be prejudiced in favour of any particular view. The importance of the social aspect is also emphasized in the curriculum, in which it is stated that school is a social and cultural meeting place with both the opportunity and the responsibility to strengthen that ability among all who work or study there. The Supreme Administrative Court has also confirmed that, for an exemption from the public school system, special circumstances would have to be established that meet the threshold of exceptional circumstances within the meaning of chapter 24, section 23, of the Education Act for permitting homeschooling.

4.7 Furthermore, the State party explained the legal avenues for seeking compensation for the alleged violation of the authors' rights. The Swedish Tort Liability Act provides for the

State's liability for damages in particular cases, while the case law of the Supreme Court, without the explicit support of the Tort Liability Act, has awarded pecuniary or non-pecuniary compensation to individuals for actions involving violations of fundamental rights and freedoms. An individual can institute civil proceedings before a district court claiming such compensation. The aforementioned case law has been codified in the Tort Liability Act since 1 April 2018. As an alternative to turning directly to a district court, a claimant can choose to first submit a claim to the Chancellor of Justice for damages from the Swedish State.

4.8 As to the facts, the authors applied in January 2014 to the Children and Education Board in Nordmaling Municipality for their daughter, born in 2006, to be permitted to complete her compulsory schooling in an alternative way through homeschooling.

4.9 The main ground for the application was the authors' desire to maintain and develop their daughter's bilingualism (English and Swedish). They believed that compulsory school would not meet that need. They stated that the homeschooling carried out the previous year, when they had been travelling, had worked out well and had yielded good results. After her first term in grade 1, their daughter had started her second term in grade 2. The Children and Education Board noted that, under chapter 24, section 23, of the Education Act, the municipality may permit compulsory schooling to be completed in an alternative way if there are exceptional circumstances. The Board decided to reject the application on the grounds that the reasons stated by the caregivers did not constitute exceptional circumstances and that the legislation did not provide any latitude to approve the application.

4.10 The authors appealed the decision to the Administrative Court in Umeå, stating that their daughter needed bilingual and bicultural teaching to function as a citizen in two countries, which could be achieved through homeschooling. They added that their daughter was very "far ahead" in some subjects, despite being in class with children who were one year older that she. Their homeschooling was satisfactory and they were willing to have regular contact with the school to provide transparency regarding their teaching. Furthermore, they held that Sweden did not have cause to require exceptional circumstances as a requisite for home education. Moreover, they stated that parents had the right, under article 26 (3) of the Universal Declaration of Human Rights, to choose their children's education.

4.11 The Administrative Court requested the Children and Education Board to submit written observations on the appeal. The Board opposed the reversal of its decision and held that there were no exceptional circumstances that would permit homeschooling in the authors' case. The Board essentially referred to a judgment from the Supreme Administrative Court and statements in the *travaux préparatoires* of the Education Act which, inter alia, indicated that teaching in school should be comprehensive and fact-based in such a way that everyone was able to take part and that the provisions on homeschooling should be applied very restrictively. The Administrative Court rejected the appeal and, in its judgment, noted that where was no provision in the Education Act that provided for homeschooling on the basis of a family's religious or philosophical views.

4.12 While home education may be allowed for a limited period of time, such as on a long trip, the right of all children to an education of equal quality is one of the cornerstones of the Swedish educational system. The assessment of whether exceptional circumstances exist must be based on the best interests of the pupil.

4.13 In its assessment, the Administrative Court held that the basic premise in the Education Act was that compulsory schooling must be completed in school. The Court further found that there was no unconditional right to complete compulsory schooling in an alternative way without all requisites contained in the Education Act having been met. The Court clarified that "exceptional circumstances" should be interpreted restrictively and it rejected the appeal, concluding that the circumstances described by the authors were not exceptional within the meaning of the Education Act.

4.14 The authors appealed the Administrative Court's decision to the Administrative Court of Appeal in Sundsvall, describing the advantages of homeschooling. The Administrative Court of Appeal can grant leave to appeal for various reasons, including doubt about the correctness of the conclusion reached or importance for guidance on the application of the law. The Administrative Court of Appeal found no reasons to grant leave to appeal.

4.15 The authors then appealed the decision to the Supreme Administrative Court. The Court can grant leave to appeal on two grounds: either because a judgment could be of significance in creating a precedent or because there are exceptional circumstances, including grounds for a review of the case. In February 2015, the Supreme Administrative Court found that there was no reason for granting leave to appeal.

4.16 The merits of the matter concerning homeschooling have thus been examined in two instances as has the matter of leave to appeal. The decision not to permit the authors' daughter to complete compulsory schooling in an alternative way thus became final and non-appealable.

4.17 Finally, the State party notes that the authors have moved away from Sweden, as their status appears as "emigrated" in the Swedish population register.

Authors' comments on the State party's observations

5.1 On 29 May 2019, the authors submitted comments on the State party's observations. The authors first argue that the communication should be declared admissible. They assert that they have established their status as "victims", in that they were affected by the denial of their request for their daughter to complete compulsory schooling in an alternative way. The authors have also exhausted all available domestic remedies and they do not consider civil or administrative proceedings leading solely to an award of damages to be adequate and effective remedies.[5] In addition, the authors have sufficiently substantiated their claims under articles 18, 26 and 27 of the Covenant. Finally, the authors' communication is not incompatible with the provisions of the Covenant. The communication falls within the meaning of article 18, because the authors' freedom to manifest their pedagogical beliefs, guaranteed by article 18 (1), was limited, contrary to article 18 (3). Their communication concerns religious and moral convictions, as their pedagogical convictions represent beliefs.[6]

5.2 Concerning the merits, the authors maintain that their communication reveals violations of articles 18, 26 and 27 of the Covenant, referring to the relevant case law in support of their claims (see paras. 3.1–3.5 above). The authors refer to the Committee's case law, citing, for example, its decisions in *Leirvåget et al. v. Norway*,[7] *M.A. v. Italy*[8] and *Yoon and Choi v. Republic of Korea*.[9] The authors also refer to the decision of the European Court of Human Rights in *Konrad v. Germany*.[10]

5.3 The authors recall that they wanted an education for their daughter that accomplished several objectives: (a) to maximize her academic opportunities; (b) to take her age into account so that her moral development was appropriate; and (c) to instil academic, linguistic and cultural fluency in relation to both countries of nationality. Those objectives are in alignment with the Swedish Education Act. The excellent results of the initial period of homeschooling strengthened the authors' desire to homeschool their daughter in conformity with their pedagogical convictions, since the education in the Swedish schools would force the authors to forfeit the third educational objective.

5.4 The authors' application to homeschool their daughter was denied, as the stated circumstances were not considered to qualify as "exceptional", which ignored the legitimate educational needs of the authors' daughter and the philosophical convictions of the authors. After the Supreme Administrative Court of Sweden dismissed the authors' final appeal, in 2015, they relocated to the United States, where they could assume their responsibilities as the primary educators of their daughter and homeschool her in conformity with their philosophical convictions. Although living abroad, the authors continue to pursue their right

[5] *Rabbae et al. v. Netherlands* (CCPR/C/117/D/2124/2011), para. 9.4.

[6] See European Court of Human Rights, *Case "relating to certain aspects of the laws on the use of languages in education in Belgium" v. Belgium*, Applications No. 1474/62, No. 1677/62, No. 1691/62, No. 1769/63, No. 1994/63 and No. 2126/64, Judgment, 23 July 1968.

[7] CCPR/C/82/D/1155/2003.

[8] See *Official Records of the General Assembly, 1984, Supplement No. 40* (A/39/40), annex XIV.

[9] CCPR/C/88/D/1321-1322/2004.

[10] European Court of Human Rights, *Konrad v. Germany*, Application No. 35504/03, Judgment, 11 September 2006.

to homeschool their daughter in Sweden through the proceedings with the Committee, in an attempt to obtain permission to that effect. The authors submit that it is the fundamental right of parents to choose the kind of education given to their children. The State party unjustly interfered with the authors' freedom to manifest their beliefs, in violation of articles 18 (1), (3) and (4), 26 and 27 of the Convention. Their case and their subsequent appeals were arbitrarily and summarily dismissed, even though the case clearly qualified for the finding of "exceptional circumstances".

Additional comments from the authors

5.5 The authors provided additional comments on the State party's observations through third-party submissions. On 3 June and 4 June 2019, respectively, the Home School Legal Defense Association and Scandinavian Human Rights Lawyers submitted third-party submissions at the request of the authors and in support of their claims.

5.6 The Home School Legal Defense Association argues that multiple binding human rights instruments[11] impose legal obligations on Sweden to protect the right to education and that that right includes within its scope the right to homeschooling,[12] as asserted by the Special Rapporteur on the right to education. The referenced instruments protect the parental right to select the means by which one's children will be educated and also protect the right of the child to alternative forms of education, including homeschooling. Numerous international jurisdictions protect the right to homeschooling.

5.7 The Association asserts that, in the case that was the subject of *Konrad v. Germany*, the Federal Constitutional Court of Germany did not address the right to homeschooling under the Covenant, the International Covenant on Economic, Social and Cultural Rights or the Convention on the Rights of the Child, whereas the decision of the European Court of Human Rights inaccurately applied the proportionality analysis and should be rejected as unpersuasive and inapplicable. Although education is not recognized in the Covenant as a positive right, parental rights in education are recognized and protected under article 18 (4), which prohibits the State from interfering with parental liberty to ensure that their children receive a religious or moral education in conformity with the parents' own religious or philosophical convictions.[13]

5.8 Scandinavian Human Rights Lawyers argues that, although Sweden has not officially banned all homeschooling, the imposition of the requirement of "exceptional circumstances" and the application by the Swedish courts of that provision amount to an effective and de facto ban on homeschooling, contrary to the Covenant.

State party's additional observations

6.1 On 29 October 2020, the State party submitted observations on the third-party submissions furnished by the Home School Legal Defense Association and Scandinavian Human Rights Lawyers in support of the authors' communication.

6.2 The State party contends that the third-party submissions contain general reasoning that has only a limited bearing or no bearing on the communication in question. Accordingly, those submissions should be of limited importance to the Committee's assessment of the present case. As regards the submission by Scandinavian Human Rights Lawyers, the State party holds that the opinion of the Council on Legislation indicates that chapter 24, section 23, of the Education Act does not cause problems of application in relation to article 18 (4) of the Covenant. The Government agrees with the view that domestic case law relating to homeschooling and the assessment of exceptional circumstances is limited.

6.3 There is no indication of arbitrariness in the judgments referred to by Scandinavian Human Rights Lawyers. The State party adds that there is no ban on homeschooling in the relevant legislation and that the authors themselves were granted permission to homeschool

[11] The International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the Convention on the Rights of the Child.

[12] Reference was made to *Unn et al. v. Norway* (CCPR/C/82/D/1155/2003). The right to education cannot be limited to education that occurs in a formalized classroom setting.

[13] Article 4 (2) of the Covenant makes that right non-derogable.

their daughter in 2013. In addition, the Government asserts that, in the academic year 2019/20, 146 students were authorized to fulfil their compulsory schooling in other ways than that set out in the Education Act on the basis of exceptional circumstances. The relevant provisions in the Education Act might entail a restrictive application, but that can in no way be equated with a de facto ban on homeschooling.

6.4 As regards the submission by the Home School Legal Defense Association, the State party notes that a substantial portion of the submission consists of far-reaching and moot interpretations of other international human rights instruments. It seems exceptionally expansive to interpret article 26 (3) of the Universal Declaration of Human Rights as establishing the right of parents to homeschool their children and that that principle would then guide the interpretation of the rights of parents in all other modern human rights instruments. As regards the scope of the Committee's examination, its task is to monitor the implementation of the Covenant and examine individual complaints on the basis of alleged violations thereof. The State party holds that the ways in which the United States and other countries have chosen to design their education systems should be of limited importance for the assessment of the present communication.

6.5 The Association emphasizes that the Committee should not attach any importance to the decision of the European Court of Human Rights in *Konrad v. Germany*, as the principle of proportionality was wrongly applied. The State party strongly objects to that assertion, as the way in which the Court applied the principle of proportionality in *Konrad v. Germany* was consistent with the way in which that fundamental principle is usually applied by the Court.

6.6 The Association also argues that there is now a greater consensus in Europe on the legal status of home education than was the case when the European Court ruled in *Konrad v. Germany*. As regards the view on homeschooling in Europe, the Government maintains that there is no legislative consensus.[14] In addition, the relevance of the Court's findings in *Konrad v. Germany* was underlined by the judgment in *Wunderlich v. Germany*.[15] In the latter case, the prohibition of homeschooling in Germany was an underlying issue. However, the European Court, referring, inter alia, to *Konrad v. Germany*, concluded that the Court had previously ruled on the compatibility between the relevant prohibition and the Convention. There is no reason to reject the importance of *Konrad v. Germany* as a precedent. In view of the apparent similarity between article 18 (4) of the Covenant and article 2 of Protocol No. 1 to the European Convention on Human Rights, the State party holds that the Court's decision in *Konrad v. Germany* is of paramount importance to the assessment of the present complaint.

6.7 Finally, the State party reiterates its initial observations, in particular as regards the national margin of discretion. It is evident from the Committee's jurisprudence that it often allows States a margin of discretion. In the case of *Hertzberg v. Finland*,[16] the Committee stated that there was no universally applicable common standard and that, consequently, a certain margin of discretion must be accorded to the responsible authorities. In *Raihman v. Latvia*,[17] the Committee held that the question of legislative policy and the modalities to protect and promote a legitimate objective was best left to the appreciation of States parties. The Committee's reasoning was similar in *Länsman et al. v. Finland* [18] and *Borzov v. Estonia*.[19]

6.8 States parties enjoy a wide margin of discretion regarding how to best respect parents' rights under article 18 (4) of the Covenant when deciding what educational system and curricula to adopt. As stated above, there is support for that margin of discretion in the jurisprudence of the European Court of Human Rights, which has expressly stated that the

[14] See European Commission, Education, Audiovisual and Culture Executive Agency and Information Network on Education in Europe, *Home Education Policies in Europe: Primary and Lower Secondary Education*, Eurydice Report (Luxembourg, Publications Office of the European Union, 2018).

[15] *Wunderlich v. Germany*, Application No. 18925/15, Judgment, 10 January 2019, paras. 42 and 50.

[16] Human Rights Committee, communication No. 61/1979, para. 10.3.

[17] CCPR/C/100/D/1621/2007, para. 8.3.

[18] CCPR/C/52/D/511/1992, para. 9.6.

[19] CCPR/C/81/D/1136/2002, para. 7.3.

setting and planning of the curriculum, in principle, fall within the competence of the contracting States.[20]

State party's further observations

7.1 On 29 October 2020, the State party submitted further observations on admissibility and the merits. It notes that the authors' additional comments through third parties, albeit extensive, do not include any information not covered by the State party's initial observations.

7.2 The State party has reiterated that the communication is inadmissible since it represents *actio popularis*. It refutes the authors' assertion that they were "forced" to leave Sweden because the request to homeschool their daughter was denied.

7.3 As to the exhaustion of domestic remedies, it notes again that the authors seem to have moved from Sweden, as their status appears as "emigrated" in the Swedish population register. In their further comments, the authors confirm that they relocated to the United States in 2015 and have lived there for the past five years. It has not been asserted that they requested permission to homeschool their daughter in Sweden after the impugned decision became final and non-appealable. The authors' daughter, if she had resided in Sweden, would now be at the very end of her studies in compulsory school. The State party reiterates that a claim for compensation in the present case would have been, and still is, an available and sufficient remedy for any potential violation of the authors' rights.

7.4 As regards the authors' claims under articles 26 and 27, the State party refers to its initial observations, adding arguments regarding admissibility and the merits. As to the alleged discrimination due to the fact that the authorities did not sufficiently take into account the specific circumstances that made a differentiation in treatment necessary, the State party argues that the authors' claim concerning discrimination in the decision-making process lacks support. The specific circumstances invoked by the authors have been properly assessed by the domestic authorities. Even if the complaint concerned a protected ground under article 26, the mere fact that an application is rejected does not constitute a violation of the principle of non-discrimination. Moreover, no causal link has been established.

7.5 As to the claims under article 27, the State party maintains that the authors have not been denied the right to use their own language and that the decision not to permit homeschooling for their daughter has a much narrower scope and solely means that the authors are not granted permission to educate their daughter at home as requested.

Issues and proceedings before the Committee

Consideration of admissibility

8.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with rule 97 of its rules of procedure, whether it is admissible under the Optional Protocol.

8.2 The Committee has ascertained, as required under article 5 (2) (a) of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement.

8.3 The Committee notes the State party's objection to the authors' assertion that they have exhausted all effective domestic remedies. The State party argues that the authors could resort to a district court or to the Chancellor of State pursuant to the Tort Liability Act to seek compensation for the allegedly unlawful act by the public authorities, namely, the refusal by the Children and Education Board of the authors' request to homeschool their daughter, which was endorsed by the subsequent court decisions. The Committee, however, observes that the authors appealed the Board's negative decision to the Administrative Court and sought leave to appeal from the Administrative Court of Appeal and the Supreme Administrative Court, the highest judicial authority, to no avail. Taking into account that the

[20] European Court of Human Rights, *Valsamis v. Greece*, Application No. 21787/93, Judgment, 18 December 1996, para. 28; and *Kjeldsen, Busk Madsen and Pedersen v. Denmark*, Applications No. 5095/71, No. 5920/72 and No. 5926/72, Judgment, 7 December 1976, para. 53.

proposed remedy under the Tort Liability Act would not lead to securing homeschooling for the authors' daughter, the Committee finds that the consideration of the authors' communication is not precluded by the requirements of article 5 (2) (b) of the Optional Protocol.

8.4 Furthermore, the Committee notes the State party's objection that the authors' communication amounts to *actio popularis*, as it appears to challenge the legislative framework for compulsory schooling, contained in the Education Act, and the exemptions thereof in exceptional circumstances. While some of the authors' arguments and the third-party submissions appear to contest the legislation in general, the authors' main claim concerns the refusal by the State party's authorities to grant the authors' request to homeschool their daughter, which may have affected the rights of the authors and their daughter. In such circumstances, the Committee considers that the authors have established their victim status for the purposes of the present communication, in accordance with article 1 of the Optional Protocol.[21]

8.5 As regards the authors' claims under article 2 (1) of the Covenant, the Committee recalls its jurisprudence that the provisions of article 2 lay down general obligations for States parties and cannot, by themselves, give rise to a separate claim under the Optional Protocol, as they can be invoked only in conjunction with other substantive articles of the Covenant (contained in part III).[22] Since the authors have made no specific allegations in that regard, the Committee must consider that part of the authors' claims to be inadmissible *ratione materiae*, pursuant to article 3 of the Optional Protocol.

8.6 As regards the authors' claim under article 17, the Committee notes that the authors made only general assertions in their initial communication that the rejection of their homeschooling request had had an impact on their privacy, family and home, without specifying that impact further. The Committee therefore considers that the authors failed to substantiate their claim for the purposes of admissibility and consequently declares it inadmissible, pursuant to article 2 of the Optional Protocol.

8.7 As regards the authors' claims under article 18, the Committee notes the authors' argument that, by prohibiting them from educating their daughter at home, the State party unjustly interfered with their freedom of religion or belief. The State party's authorities concluded that the authors' stated reasons for homeschooling their daughter did not qualify as "exceptional circumstances" that would enable the granting of an exemption from compulsory schooling. The authors also argue that the authorities' prohibition was not decided in pursuit any of the legitimate aims of permissible restrictions of their freedoms, as set out in article 18, but rather was decided in accordance with an obtuse pedagogical understanding, according to which all students should be treated alike, despite their different needs and capabilities. The authors emphasize that they sought control over the education of their daughter, in conformity with their own pedagogical and philosophical convictions. The Committee also notes the State party's counterargument that it enjoys a margin of discretion in the organization of its compulsory schooling, which is objective and neutral. The State party stresses that, in principle, the domestic courts should evaluate the facts and evidence, unless the evaluation is manifestly arbitrary or amounts to a denial of justice, and that the domestic proceedings were not in any way arbitrary or procedurally flawed. The State party adds that, in the present case, the authors' individual circumstances were duly considered but that the stated reasons did not meet the high threshold for constituting exceptional circumstances that would permit an alternative to compulsory schooling in the form of homeschooling, in accordance with the Education Act. The State party also adds that the Swedish authorities did recognize homeschooling, as evidenced by the fact that the authors themselves were granted permission to homeschool their daughter in 2013 and also by the fact that 146 students were authorized to fulfil compulsory schooling in alternative ways for exceptional reasons during the academic year 2019/20.

8.8 As regards the authors' claims under article 18, the Committee notes that the Covenant does not guarantee everyone's right to education as such. The Committee observes that the

[21] *Toussaint v. Canada* (CCPR/C/123/D/2348/2014), paras. 10.3 and 10.4.

[22] Ibid., para. 10.12.

authors submitted a request to homeschool their daughter when she was 7 years old and that they left the State party for the United States following the final negative decision on their request. Furthermore, the Committee observes the State party's argument that, while homeschooling may allow children to acquire the same standard of knowledge as that provided by primary school, other important objectives relating to the right to education, such as ensuring objective, critical and pluralistic teaching and strengthening social integration, could be achieved only by school attendance. In addition, the Committee observes the State party's assertion that the imposition of compulsory school attendance does not deprive parents of their right to exercise the role of educator or to guide their children on a path in line with their religious or philosophical beliefs. In that context, the Committee notes that, although the authors challenged the negative decision of the Children and Education Board, which was endorsed by the courts on appeal, their claims are, in part, of a general nature, contesting the applicable legal framework in their case.

8.9 Even broadly construed,[23] the Committee considers that the authors' claim does not fall within the scope of article 18 (1) of the Covenant. The authors have not sufficiently substantiated that the intended exercise of integrated education in the language, history and culture of both countries in the form of homeschooling would qualify as a manifestation of a "religion" or "belief", in line with its interpretation of article 18 (1), or that such convictions and opinions could be subsumed under religious and moral education, in accordance with article 18 (4), as homeschooling is not, in itself, religious or moral education but rather the parents' pedagogical choice. Moreover, even assuming that their request for homeschooling reflected the "beliefs" covered by article 18 (1), the authors have not adequately substantiated their claim that, by rejecting their request, the State party violated article 18 (3) of the Covenant due to unlawful, disproportionate or unnecessary interference with the authors' rights under article 18. In addition, the authors have not established that the authorities' evaluation of their request for an exemption from compulsory education due to exceptional individual circumstances was clearly arbitrary or amounted to a denial of justice. The Committee therefore finds the authors' claim that the State party violated its obligations under article 18 of the Covenant as not sufficiently substantiated for the purposes of admissibility and concludes that that part of the authors' claims is inadmissible under article 2 of the Optional Protocol.

8.10 As regards the authors' claim under article 26, the Committee notes the State party's argument that the specific circumstances invoked by the authors were properly assessed by the domestic authorities, that the mere fact that an application is rejected does not constitute a violation of the principle of non-discrimination and that no causal link between the disputed rejection of the request for exemption and the alleged discriminatory consequence was established. As regards the authors' claim under article 27, the Committee notes the State party's argument that the authors were not denied the right to use their own language or practise their own culture and that the decision not to permit the homeschooling of their daughter meant solely that the authors were not granted permission to educate their daughter at home as requested. The Committee recalls that, for the purposes of article 26 of the Covenant, a difference in treatment between persons in analogous or relevantly similar positions is discriminatory if it has no objective and reasonable justification, that is, if it does not pursue a legitimate aim or if there is no reasonable relationship of proportionality between the means employed and the aim sought to be realized.[24] Moreover, States parties enjoy a margin of appreciation[25] in assessing whether and to what extent differences in otherwise similar situations justify different treatment. The Committee notes that there exists a difference of treatment between the authors' daughter and other children who have obtained an exemption from compulsory school attendance "in exceptional circumstances", as provided for by the Education Act. The exemptions in other cases were granted by the authorities because the limited feasibility of school attendance would have caused undue hardship for those children. Those exemptions were, hence, granted for merely practical reasons, taking into account the children's best interests, whereas the authors sought to obtain

[23] General comment No. 22 (1993), para. 2.

[24] General comment No. 18 (1989) on non-discrimination, para. 13.

[25] *Hertzberg et al. v. Finland*, para. 10.3; and *Raihman v. Latvia* (CCPR/C/100/D/1621/2007), para. 8.3. See also general comment No. 34 (2011) on the freedoms of opinion and expression, para. 36.

an exemption mainly for pedagogical and philosophical purposes. Therefore, the Committee finds that the authors have not substantiated that the authorities' assessment and rejection of their request for an exemption from compulsory public education was discriminatory. The Committee also finds that the authors' claims under article 27 of the Covenant have been largely congruent with their claims under article 26. Accordingly, the Committee considers that that part of the authors' communication must also be rejected as inadmissible due to a lack of sufficient substantiation, in accordance with article 2 of the Optional Protocol.

9. The Committee therefore decides:

(a) That the communication is inadmissible under articles 2 and 3 of the Optional Protocol;

(b) That the present decision shall be transmitted to the State party and to the authors.