COUR EUROPÉENNE DES DROITS DE L'HOMME
EUROPEAN COURT OF HUMAN RIGHTS

COURT (PLENARY)

CASE "RELATING TO CERTAIN ASPECTS OF THE LAWS ON THE USE OF LANGUAGES IN EDUCATION IN BELGIUM" v. BELGIUM (MERITS)

(Application n° 1474/62; 1677/62; 1691/62; 1769/63; 1994/63; 2126/64)

JUDGMENT

STRASBOURG

23 July 1968

In the case "relating to certain aspects of the laws on the use of languages in education in Belgium",

The European Court of Human Rights, taking its decision in plenary session in accordance with Rule 48 of the Rules of Court, and composed of the following Judges:

Mr. R. CASSIN, *President*, and
MM. A. HOLMBÄCK,
A. VERDROSS,
G. MARIDAKIS,
E. RODENBOURG,
A. ROSS,
T. WOLD,
G. BALLADORE PALLIERI,
H. MOSLER,
M. ZEKIA,
A. FAVRE,
J. CREMONA,
Sir HUMPHREY WALDOCK,
G. WIARDA,
Mr. A. MAST, *Judge ad hoc*, and also
Mr. H. GOLSONG, *Registrar*, and
Mr. M.-A. EISSEN, *Deputy Registrar*

Decides as follows concerning the merits of the case:

PROCEDURE

1. By a request dated 25th June 1965, the European Commission of Human Rights (hereinafter referred to as "the Commission") brought before the Court a case relating to certain aspects of the laws on the use of languages in education in Belgium.

The origins of this case lie in six applications against the Kingdom of Belgium lodged with the Commission under Article 25 (art. 25) of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter referred to as "the Convention"). These applications, the first of which was deposited on 16th June 1962 and the last on 28th January 1964 were submitted by inhabitants of Alsemberg and Beersel, Kraainem, Antwerp and environs, Ghent and environs, Louvain and environs and Vilvorde.

2. The Belgian Government, Party, raised a preliminary objection which was rejected by the Court in a judgment on 9th February 1967. That judgment includes a summary of proceedings prior to its delivery.

3. On 9th February 1967, the President of the Court ascertained the views of the Agent for the Belgian Government, and of the Delegates of the Commission, on the procedure to be followed concerning the merits of the case. By an Order of the same date he decided, in pursuance of Rules 35 (1) and 48 (3) of the Rules of Court:

- that the Belgian Government would have until 1st May 1967 to file a first memorial;
- that the Commission would be entitled to file a memorial in reply within the two months following the receipt of the memorial of the Government;
- that the Belgian Government would have, in order to file a second and last memorial, until 15th September 1967.

Both time-limits set for the Belgian Government were extended to, respectively, 10th May 1967 (Order of 26th April) and 2nd October 1967 (Order of 2nd September).

4. The Belgian Government's first memorial was received by the Registry of the Court on 9th May 1967, the Commission's memorial on 12th July 1967 and the Government's second memorial on 2nd October 1967.

5. On 6th June 1967, the Secretary of the Commission informed the Registrar that the Commission had instructed its President, Mr. M. Sørensen, to represent it as principal Delegate in subsequent proceedings before the Court, Mr. S. Petrén having been relieved of this function at his own request.

6. By a letter of 22nd November 1967, the Belgian Government informed the President of the Court that it had appointed Mr. A. de Granges de Surgères as its Agent to replace Mr. A. Gomrée, deceased.

7. In accordance with an Order made by the President of the Court on 7th October 1967, a public hearing was opened in Strasbourg on 25th November 1976 in the Human Rights Building; the hearing continued on 27th, 29th and 30th November.

There appeared before the Court:

- for the Commission:

Mr M. SØRENSEN, *Principal Delegate*, assisted by:

Mr. G. JANSSEN-PEVTSCHIN and Mr. F. WELTER, *Delegates*;

- for the Belgian Government:

Mr. A. DE GRANGES DE SURGERES, Directeur général de l'administration de la Législation at the Belgian Ministry of Justice, *Agent*, assisted by:

Me. A. BAYART, Barrister at the Belgian Court of Cassation, *Counsel*,

and

Mr. P. GUGGENHEIM, Honorary Professor at the University of Geneva, and Professor at the University Institute of Advanced International Studies,

Geneva, *Counsel*;

Mr. A. VANDER STICHELE, Assistant to the Auditeur général of the Belgian Conseil d'État, *Expert*;

The Court heard statements and submissions:

- for the Commission by MM. F. WELTER and M. SØRENSEN;
- for the Belgian Government by Me. A. BAYART, Mr. P. GUGGENHEIM and Mr. A. DE GRANGES DE SURGÈRES.

The Court also put a number of questions to those appearing before it, to which the latter replied verbally on 29th and 30th November.

On 30th November, the President declared the hearing closed.

8. The Court met in private on 30th November and 1st December 1967. On 1st December, it instructed the Registrar - who carried out the order on 5th December - to ask the Belgian Government and Commission for additional information concerning, on the one hand, the situation with regard to unsubsidised establishments in the Dutch-language area which provide French-language education.

The replies from both the Belgian Government and the Commission reached the Registrar on 10th January 1968. The Government made certain additions to its reply in March 1968.

9. After further deliberation the Court pronounced the present judgment.

THE FACTS

1. The object of the Commission's request is to submit the case to the Court, so that the Court may decide whether or not certain provisions of the Belgian linguistic legislation relating to education are in conformity with the requirements of Articles 8 and 14 (art. 8, art. 14) of the Convention and Article 2 of the Protocol of 20th March 1952 (hereinafter referred to as "the Protocol") (P1-2).

2. The Applicants, who are parents of families of Belgian nationality, applied to the Commission both on their own behalf and on behalf of their children under age, of whom there are more than 800. Pointing out that they are French-speaking or that they express themselves most frequently in French, they want their children to be educated in that language.

Alsemberg, Beersel, Antwerp, Ghent, Louvain and Vilvorde, where the signatories of five of the six applications (Nos. 1474/62, 1691/62, 1769/63, 1994/63 and 2126/64) live, belong to the region considered by law as Dutch-speaking, whereas Kraainem (Application No. 1677/62) has since 1963 formed part of a separate administrative district with a "special status". In all of these districts ("communes"), part of the population - in some cases a large part - is French-speaking.

3. Though the six applications differ on a number of points, they are similar in many respects. For the time being it is sufficient to note that in substance they complain that the Belgian State:

- does not provide any French-language education in the municipalities where the Applicants live or, in the case of Kraainem, that the provision made for such education is, in their opinion, inadequate;
- withholds grants from any institutions in the said municipalities which may fail to comply with the linguistic provisions of the legislation for schools;
- refuses to homologate leaving certificates issued by such institutions;
- does not allow the Applicants' children to attend the French classes which exist in certain places;
- thereby obliges the Applicants either to enrol their children in local schools, a solution which they consider contrary to their aspirations, or to send them to school in the "Greater Brussels district", where the language of instruction is Dutch or French according to the child's mother-tongue or usual language or in the "French-speaking region" (Walloon area). Such "scholastic emigration" is said to entail serious risks and hardships.

4. The Applications in so far as they have been declared admissible by the Commission, allege that Articles 8 and 14 (art. 8, art. 14) of the Convention and Article 2 of the Protocol (P1-2) have been violated. The violation is said to be a result of the Applicants and their children being subjected to various provisions of the Act of 14th July 1932 "on language regulations in primary and intermediate education", the Act of 15th July 1932 "on the conferring of academic degrees", the Acts of 27th July 1955 and 29th May 1959, the Act of 30th July 1963 "relating to the use of languages in education" and the Act of 2nd August 1963 "on the use of languages in administrative matters", etc. The Acts of 14th and 15th July 1932 were repealed by the Act of 30th July 1963, but were still in force when the Alsemberg, Beersel, Kraainem, Antwerp and Ghent Applicants brought their cases before the Commission, and those Applicants still challenge these Acts while at the same time attacking the present legislation.

5. Summarising the opinion expressed in its Report of 24th June 1965 (hereinafter referred to as "the Report"), the Commission recalled in paragraph 7 of its memorial of 17th December 1965 that it took the view:

> "- by 9 votes to 3, that the legislation complained of was not incompatible with the first sentence of Article 2 of the Protocol (P1-2), considered in isolation;
>
> - unanimously, that the legislation was not incompatible with the second sentence of the said Article (P1-2), considered in isolation or in conjunction with Article 14 (art. 14+P1-2) of the Convention;
>
> - by 10 votes to 2, that the legislation was not incompatible, in the case of the Applicants, with Article 8 (art. 8) of the Convention, considered in isolation or in conjunction with Article 14 (art. 14+8);

- by 9 votes to 3, that the general system of education in the areas which are unilingual by law was not incompatible with the first sentence of Article 2 of the Protocol, considered in conjunction with Article 14 (art. 14+P1-2) of the Convention;

- by 11 votes to 1, that the same was true of the "special status" conferred by Section 7 of the Act of 2nd August 1963 on six bilingual communes, of which Kraainem is one, on the periphery of Brussels;

- by 7 votes to 5, that the Acts of 1963 were incompatible with the first sentence of Article 2 of the Protocol, read in conjunction with Article 14 (art. 14+P1-2) of the Convention, in so far as they result in the total withdrawal of subsidies from provincial, commune and private schools providing, in the form of non-subsidised classes and in addition to instruction given in the language prescribed by the language legislation, complete or partial education in another language; - unanimously, that the conditions on which children whose parents live outside the Greater Brussels district may be enrolled in schools in that district (Section 17 of the Act of 30th July 1963) were not, in the case of the Applicants, incompatible with the first sentence of Article 2 of the Protocol, read in conjunction with Article 14 (art. 14+P1-2) of the Convention;

- that the Acts of 1963 were incompatible with the first sentence of Article 2 of the Protocol, read in conjunction with Article 14 (art. 14+P1-2) of the Convention, in so far as they prevent certain children, solely on the basis of their parents' place of residence, from attending French-language schools at Louvain (8 votes to 4) and in the above-mentioned six communes on the periphery of Brussels (7 votes to 5);

- by 8 votes to 4, that the legislation complained of was also incompatible with the first sentence of Article 2 of the Protocol, read in conjunction with Article 14 (art. 14+P1-2) of the Convention, in so far as it has resulted, since 1932, in a refusal to homologate certificates relating to secondary schooling not in accordance with the language requirements."

6. In the course of the written proceedings the following submissions were made on the merits of the case:

- by the Belgian Government in its memorial of 9th May 1967:

"The Belgian Government submits the following conclusions:

(1) The Belgian legislation attacked in the Applications is incompatible neither with Article 2 of the Protocol (P1-2) nor with Article 8 (art. 8) of the Convention if those provisions are considered in isolation.

(2) Nor is it contrary to the first and second sentence of Article 2 of the Protocol or Article 8 of the Convention even if read in conjunction with Article 14 (art. 14+P1-2, art. 14+8) of the Convention.

(3) Neither the 1963 Acts nor those of 1932 are incompatible with Article 2, first sentence, of the Protocol, read in conjunction with Article 14 (art. 14+P1-2) of the Convention, in so far as they forbid the establishment or subsidising by the State of any schools which do not comply with the language legislation.

(4) The 1963 Acts are not contrary to Article 2, first sentence, of the Protocol, read in conjunction with Article 14 (art. 14+P1-2) of the Convention, in so far as they result

in the total withdrawal of subsidies from schools that, while they have sections in which tuition is given in the regional language, also provide complete or partial education in another language.

(5) The system introduced by the Act of 2nd August 1963 in the communes on the periphery of Brussels, including Kraainem, is not incompatible with Article 2, first sentence, of the Protocol, read in conjunction with Article 14 (art. 14+P1-2) of the Convention.

(6) The residence conditions laid down in the 1963 Acts for admission to the French-language schools at Louvain and in the communes on the periphery of Brussels, including Kraainem, are compatible with Article 2, first sentence, of the Protocol, read in conjunction with Article 14 (art. 14+P1-2) of the Convention.

(7) The provisions of the 1932 and 1963 Acts are compatible with Article 2, first sentence, of the Protocol, read in conjunction with Article 14 (art. 14+P1-2) of the Convention, in so far as they result in the refusal of homologation of secondary school leaving certificates for the sole reason that the schooling covered by them has not been in accordance with the requirements of the language legislation.

The Belgian Government reserves the right to add to or modify these conclusions in the course of the proceedings".

- by the Commission in its memorial of 12th July 1967 and, in almost identical terms, in that of 17th December 1965, prior to the judgment of 9th February 1967:

"As it recalled in its memorial of 17th December 1965, the Commission acts in the general interest and not, strictly speaking, as plaintiff vis-à-vis the High Contracting Party against which the Applications submitted to it for appraisal are directed.

It therefore once more formulates its conclusions interrogatively and invites the Court to decide whether or not the legislation of which the Applicants complain satisfies the requirements of:

(a) the first sentence of Article 2 of the Protocol (P1-2), considered in isolation;

(b) the second sentence of that Article (P1-2), considered in isolation;

(c) Article 8 (art. 8) of the Convention, considered in isolation;

(d) the first sentence of Article 2 of the Protocol read in conjunction with Article 14 (art. 14+P1-2) of the Convention;

(e) the second sentence of Article 2 of the Protocol, read in conjunction with Article 14 (art. 14+P1-2) of the Convention;

(f) Article 8 of the Convention, read in conjunction with Article 14 (art. 14+8).

In particular the Commission requests the Court to decide whether or not, in the case of the Applicants, there is violation of all or some of the above-mentioned articles, inter alia:

(a) in so far as the Acts of 1932 prevented, and those of 1963 prevent:

- the establishment, or

- the subsidisation

by the State, of schools not in conformity with the general linguistic requirements;

(b) in so far as the Acts of 1963 result in the complete withdrawal of subsidies from provincial, commune or private schools providing, in the form of non-subsidised classes and in addition to the instruction given in the language prescribed by the linguistic Acts, full or partial instruction in another language;

(c) with regard to the special status conferred by Section 7, third paragraph, of the Act of 2nd August 1963 on six communes, of which Kraainem is one, on the periphery of Brussels;

(d) with regard to the conditions on which children whose parents reside outside the Greater Brussels district may be enrolled in the schools of that district (Section 17 of the Act of 30th July 1963);

(e) in so far as Section 7, last paragraph, of the Act of 30th July 1963 and Section 7, third paragraph, of the Act of 2nd August 1963 prevent certain children, solely on the basis of their parents' place of residence, from attending French-language schools at Louvain and in the six communes mentioned under (c) above;

(f) in so far as the Acts of 1932 resulted, and those of 1963 result, in absolute refusal to homologate certificates relating to secondary schooling not in conformity with the language requirements in education.

For the reasons stated at the end of its report (...), the Commission still refrains for the time being from putting forward conclusions on the claims for damages submitted by the Applicants of Alsemberg and Beersel, Kraainem and Louvain."

- by the Belgian Government in its memorial of 2nd October 1967:

"Subsidiary, in case the Court should feel obliged to adopt the Commission's viewpoint, the Belgian State points out the legitimate grounds that justify the legislation attacked.

The Belgian Government maintains however as its main argument the conclusions set down in its first memorial on the merits and reserves its final conclusions.

The Government wishes to point out:

- first of all, that the distinctions of which the Applicants complain do not affect the rights laid down in Article 8 (art. 8) of the Convention, since the rights of parents and children with regard to education are defined not in that Article (art. 8) but in Article 2 of the Protocol (P1-2);

- that these distinctions do not affect the negative right and the freedom laid down in Article 2 of the Protocol (P1-2) but relate to positive benefits and favours, which the State may, of course, grant in order to facilitate the exercise of that right and freedom

but concerning which the High Contracting Parties have expressly declared that they did not intend to enter into any obligation;

- that the distinctions in question do not interfere with any desire of the Applicants simply to have their children educated but concern their wish to have them educated in accordance with their linguistic preferences, and that any such preferences held in educational matters were deliberately not included by the High Contracting Parties in the enumeration of rights and freedoms safeguarded by the Convention;

- that the rule of non-discrimination in Article 14 (art. 14) of the Convention cannot apply to the distinctions of which the Applicants complain, since it relates only to rights and freedoms laid down in the Convention;

- that the Applicants' complaints are unfounded."

7. The following submissions were made during the oral proceedings:

- by the Commission, on 25th November 1967:

"The Commission maintains the submissions it made to the Court at the end of its memorial on the merits of the case, while reserving the right to modify them or add to them in the light of subsequent proceedings."

- by the Belgian Government, on 27th November 1967:

"I have the honour to read to the Court the submissions made by the Belgian Government at the present stage of proceedings, while reserving the right to make any necessary additions or amendments during subsequent proceedings.

Principal submissions

May it please the Court,

To find that the measures of which the Applicants complain, whether the provisions invoked by the Applicants concerning them are considered in isolation or in conjunction, do not interfere with the rights or freedoms set forth in the European Convention on Human Rights and Protocol and, replying in greater detail to the questions submitted by the Commission:

To rule that Belgian legislation is not incompatible with:

(a) the first sentence of Article 2 of the Protocol (P1-2), considered in isolation;

(b) the second sentence of that Article (P1-2), considered in isolation;

(c) Article 8 (art. 8) of the Convention, considered in isolation;

(d) the first sentence of Article 2 of the Protocol, read in conjunction with Article 14 (art. 14+P1-2) of the Convention;

(e) the second sentence of Article 2 of the Protocol, read in conjunction with Article 14 (art. 14+P1-2) of the Convention;

(f) Article 8 of the Convention, read in conjunction with Article 14 (art. 14+8).

In particular the Belgian Government requests the Court to find that in the case of the Applicants none of those Articles, whether considered in conjunction or in isolation, has been violated, inter alia:

(a) in so far as the Acts of 1932 prevented, and those of 1963 prevent: the establishment, or the subsidisation by the State, of schools not in conformity with the general linguistic requirements;

(b) in so far as the Acts of 1963 result in the total withdrawal of subsidies from provincial, commune or private schools providing, in the form of non-subsidised classes and in addition to the instruction given in the language prescribed by the linguistic Acts, full or partial instruction in another language;

(c) with regard to the special status conferred by Section 7 (1) and (3) of the Act of 2nd August 1963 on six communes, of which Kraainem is one, on the periphery of Brussels;

(d) with regard to the conditions on which children whose parents reside outside the Greater Brussels district may be enrolled in the schools of that district (Section 17 of the Act of 30th July 1963);

(e) in so far as the last paragraph of Section 7 of the Act of 30th July 1963 and Section 7 (1) and (3) of the Act of 2nd August 1963 prevent certain children, solely on the basis of their parents' place of residence, from attending French-language schools at Louvain and in the six communes mentioned under (c) above;

(f) in so far as the Acts of 1932 resulted, and those of 1963 result, in refusal to homologate certificates relating to secondary schooling not in conformity with the language requirements in education.

Auxiliary submission

If the Court accepts the Commission's opinion that the first sentence of Article 2 of the Protocol, read in conjunction with Article 14 (art. 14+P1-2) of the Convention, lays down an obligation not to discriminate, then

May it please the Court:

To rule that the Belgian legislation complained of is in accordance with that requirement as it provides for no unlawful or arbitrary discrimination against the Applicants within the meaning of Article 14 (art. 14) of the Convention:

May it please the Court:

To rule that the Applicants' complaints are without foundation."

- by the Commission, on 29th November 1967:

"It only remains for me to confirm the submissions made by the Commission in its memorial of 11th July 1967."

- by the Belgian Government on 30th November 1967:

> "The submissions we had the honour to make to the Court (on 27th November 1967) may be considered as final ones."

THE LAWS ON THE USE OF LANGUAGES IN EDUCATION IN BELGIUM

8. The laws on the use of languages in education in Belgium have evolved considerably since the foundation of the Kingdom (1830), within the wider framework of the evolution of the "Belgian linguistic problem" on which the Commission and the Belgian Government have furnished detailed explanations to the Court (cf. in particular, paragraph 344 of the Report, and the Note of the hearing of the morning of 27th November 1967). Before examining and deciding the six questions enumerated in the respective submissions of those appearing before it, the Court believes that it is useful to give a brief outline of the principal laws on language in education which have been passed in Belgium between 1914 and the present day.

9. Article 17 of the Belgian Constitution of 7th February 1831 provides:

> "Education shall be unrestricted; all measures of restriction are prohibited; crimes may be punished only in accordance with the law. Public education provided at the expense of the State shall also be regulated by law."

Moreover, Article 23 provides:

> "The use of the languages spoken in Belgium is optional. This matter may be regulated only by law and only as regards the acts of the public authority and the judicial matters."

These two Articles have never been amended.

10. The earliest linguistic laws concerned not education but criminal procedure (Acts of 1870 and 1908) as well as the vote and the promulgation of laws (Act of 1898). Until 1932 parents in Belgium enjoyed a fairly wide freedom with regard to the language of education. An Act of 19th May 1914 made primary education compulsory. According to Section 15, a child's maternal or usual language, determined on the declaration made by the head of the family, was the language of instruction in each grade throughout the country. If the head of the school considered that the child had not the ability to profit from the instruction in the language designated, the head of the family might appeal to the inspectorate. Thanks to fairly broad interpretation of the text, some Dutch-speaking parents had their children educated in French. In some parts of Flanders there were, in addition to Dutch-language primary schools, State and private French-language primary schools, whilst secondary education was provided sometimes in French, sometimes half in French and half in Dutch (paragraphs 138 and 345 of the Report).

11. A fundamental change was made to this system by the Act of 14th July 1932 "on language regulations in primary and intermediate education".

The Bill submitted by the then Government introduced the concept of territoriality, but left families of the minority in each region with a certain freedom of choice. The explanatory memorandum stressed that the maternal language should merit the same respect as religious or philosophical convictions.

During the parliamentary debate, many members of the House of Representatives and Senators, and in particular Walloon representatives, showed a marked preference for a more "territorial" solution. The Bill was amended to that effect and approved by the House of Representatives by 81 votes to 12 with 63 abstentions, and by the Senate by 82 votes to 25 with 13 abstentions.

The territorial principle was likewise established in the Act of 28th June 1932 "on the use of languages in administrative matters" and in the Act of 15th June 1932 "on the use of languages in judicial matters".

12. The Act of 14th July 1932 was applicable to "nursery schools and municipal adopted or adoptable primary schools", to "establishments governed by the organic law on secondary education" (upper and lower secondary schools) and to "primary classes (preparatory sections) attached to secondary schools" (Sections 1, 8, 14 and 18).

This law established a distinction between the regions considered to be unilingual and the areas recognised as bilingual.

In the former, "the Flemish area", "the Walloon area" and "the German-speaking communes", the language of education was in principle that of the region (Sections 1, 8 and 14), while study of a second language (whether national or not) was compulsory only in secondary classes (Sections 3, 10, 11 and 16). This rule was, however, mitigated to a certain extent. Sections 2, 4, 15 and 17 provided that children whose maternal or usual language was not that of the region were entitled to receive their primary education in their own language. But the competent authorities remained the judges of the "reality of this need" and the "expediency of meeting it" by setting up "transmutation" classes; pupils enrolled in these classes were obliged to learn the language of the region from the second grade of primary schooling (third year) so that they would be able to derive profit, either from the fourth primary grade, or from technical or secondary education given in that language. Section 9 also provided that the "existing special language classes" in upper and lower secondary schools should be maintained for as long as they were attended by a sufficient number of pupils of three strictly defined categories.

In the Brussels urban area and bilingual communes on the linguistic boundary, the language of instruction was to be the child's maternal or usual language; teaching of the second national language was to be compulsory (Sections 5, 6, 12, 13, 18, 19 and 22). The Act of 28th June 1932 on the use

of languages in administrative matters, referred to in Section 21 of the Act of 14th July 1932, defined the Brussels urban area in Section 2 paragraph 5.

Each head of family was required to make a declaration stating his children's maternal or usual language in so far as that determined which system was applicable, but the correctness of the declaration might be subject to verification (Sections 7 and 20 of the Act of 14th July 1932).

The Act of 14th July 1932 (Section 28), supplemented by Section 13 of an Act of 27th July 1955 and by Section 24 of an Act of 29th May 1959 ("schooling agreement"), introduced a penalty for non-observance of the Act: the refusal or withdrawal, as the case may be, of the school subsidies.

Another penalty was introduced by the Act of 15th July 1932 on the conferring of academic degrees (cf. infra). The State refused to "homologate" leaving certificates issued by establishments which did not fully conform to the language laws on education. Pupils whose leaving certificates were not admissible for homologation could still obtain a legally recognised degree by taking an examination before the "Central Board".

13. Section 22 of the Act of 14th July 1932 laid down that "in every commune where the decennial census" establishes that "more than 20 % of the population habitually speaks a language other than that of the region, the teaching of this second language" may "begin in the second grade", "if the communes or the managers of adopted or adoptable schools" so "decide". For its part, the Act of 28th June 1932 on the use of languages in administrative matters provided in Section 3 (1) that:

> "Subject to the provisions of Section 2 with regard to the communes of the Brussels area, communes in which the last decennial census showed a majority of the inhabitants usually speaking a language different from that of the language group to which they are attached by virtue of Section 1 shall adopt the language of the said majority in their internal services and correspondence."

After 1846, a general census of the population took place periodically in Belgium (Royal Decree of 30th June 1846, Act of 2nd June 1856, Royal Decree of 5th July 1866, Act of 25th May 1880); under a Ministerial Decree of 18th November 1880 its purpose was to ascertain not only the number, sex and age of the inhabitants of the Kingdom, but also their language.

The last language census was in 1947. Although it revealed a certain percentage of French-speaking persons in the Flemish provinces (paragraph 349 of the Report), it also showed that the number of Flemish-speaking Belgians was increasing but that a large number of French-speaking Belgians had settled in the Flemish area, especially around Brussels. This dual tendency which seems to have become more marked since then provoked a serious reaction; the Walloons charged the Flemings with "demographic imperialism", and the Flemings charged the Walloons with "geographical imperialism" (Report of the hearing held on the morning of 27th November 1967).

The results of the language census of 1947 were not published until 1954. An Act of 2nd July 1954 attenuated the consequences which the census results should have entailed by virtue of the Acts of 28th June and 14th July 1932.

A new population census was held at the end of 1961, but it included no questions concerning the use of languages (Section 3 of the Act of 24th July 1961 and the Royal Decree of 3rd November 1961).

More recently an Act of 8th November 1962 changed the boundaries of provinces, districts and communes, and amended certain provisions of the Acts of 28th June and 14th July 1932. It had the effect of fixing the linguistic boundary permanently: thus, no matter what the extent of any changes that may occur in the language spoken by the population, such changes will not affect in any way the language regulations in the various communes.

14. The Acts of 14th and 15th July 1932 were repealed by that of 30th July 1963 "relating to the use of languages in education". For their part the Acts of 28th June 1932 on the use of languages in administrative matters and of 15th June 1935 on the use of languages in judicial matters have been replaced, the first by an Act of 2nd August 1963, the second by an Act of 9th August 1963.

The Act of 30th July 1963 was adopted by a large majority in both the House of Representatives (157 votes to 33) and the Senate (120 votes to 17 with 7 abstentions). Although it lays down the same principles as the Act of 14th July 1932, it differs from the former on a number of points, some of which are important.

The new Act applies (Section 1) to official teaching establishments and independent establishments subsidised or recognised by the State and covers all levels of education with the exception of universities, which moreover are not involved in the present case. With regard to the status of six communes on the periphery of Brussels, it refers to Section 7 of the Act of 2nd August 1963 on the use of languages for administrative matters. Section 2 also refers to that Act for the definition of linguistic regions. Section 3 completes the list of these regions specifying that the 25 communes on the linguistic boundary, the communes in the German-speaking area, the "Malmédy communes" and nine communes in Eastern Belgium have been assigned "a special system to protect their minorities". The boundaries of these areas are fixed permanently.

Section 4 of the Act of 30th July 1963 is concerned with the unilingual regions. It lays down that the language of education shall be Dutch in the Dutch-speaking region, French in the French-speaking region and German in the German-speaking region, but makes provision for mitigation of this principle in the latter case (Section 8). In these regions, the study of the second language is optional at the primary level (Section 9); the Act of 30th

July 1963 provides no express regulations on this matter for secondary schools (paragraphs 176, 211 and 367 (d) of the Report).

The 19 communes of the Greater Brussels district (Sections 5 and 21) are governed by bilingual arrangements based on the criterion of the child's maternal or usual language; study of the second national language is compulsory in the primary classes and optional at the secondary level (Sections 10 and 11).

Six communes on the outskirts of Brussels, including Kraainem, "enjoy a special status" (Section 7 paragraph 3 of the Act of 2nd August 1963). The normal language there is Dutch. However, children may receive nursery and primary education - but not secondary education - in French if this is the child's maternal or usual language and provided the head of the family is resident in one of these communes. Such education must be organised by the commune if asked to do so by 16 heads of family residing in that commune. In the Dutch-language schools in the six communes in question, teaching of French is optional, whereas teaching of Dutch is compulsory in the French-language schools.

Lastly, the Act of 30th July 1963 introduced several special systems. The Louvain system (cf. infra) is the only one of these which needs to be analysed here; as far as the others are concerned it is enough merely to refer to Sections 3, 6, 7, 10 and 20 of the Act and to the relevant passages of the Commission's Report (communes "assigned a special system to protect their minorities"; the children of military servicemen stationed at Ostend, Bourg-Léopold and Arlon; children who leave the commune where they were resident for reasons of health or such children whose parents have no permanent residence; European schools).

Chapter V of the Act of 30th July 1963 institutes "linguistic control". In unilingual areas children are, without any control, admitted to schools which teach in the language of the region, but this does not apply when the child's maternal or usual language determines the linguistic system applicable (Greater Brussels, French classes at Louvain and the six communes on the outskirts of Brussels, etc). In the latter case a headmaster may only enrol a pupil under a specific system on production of one of the following documents: a certificate by the head of the child's last school that his previous schooling has been in the language of that system; a language declaration by the head of the family endorsed by the language inspectorate, provided that it does not challenge the correctness of the declaration; a decision by the language commission or language board mentioned in Section 18 (Section 17, paragraph 2; see also the 3rd, 4th and 5th paragraphs of the Royal Decree of 30th November 1966 establishing models for the linguistic certificate and declaration). Language inspection is conducted by two inspectors, one on each language list; in case of disagreement between them the case is submitted to a commission constituted by the King; the head of family may appeal against the decision

of the inspectors or the commission to a board appointed by the King (Section 18, and Royal Decrees of 30th November 1966 on the status and functioning of the language inspectorate) without prejudice to a subsequent appeal to the Conseil d'État (paragraph 210 of the Report). For the Greater Brussels district and the six communes on the outskirts of Brussels the Act of 2nd August 1963 (Sections 6 and 7 paragraphs 1 and 5) instituted a supplementary control authority: a "Government commissioner who shall be the Vice-Governor of the province of Brabant".

Penalties have been laid down for failure to comply with the provisions of the Act of 30th July 1963. Under paragraph 6 of Section 17 "any false or incorrect enrolment of a pupil by the head-master may entail disciplinary action" - in official schools – or in the case of private, provincial, or commune schools "withdrawal of subsidies for a period of not more than six months" in respect of each infringement. More generally, it appears from Section 1 of the Act that private establishments which do not observe the provisions with regard to the languages to be used in education may not receive State subsidies; besides, the Act of 30th July 1963 rescinds neither Section 13 of the Act of 27th July 1955 nor Section 24 of the Act of 29th May 1959. Moreover, the 1963 legislation results in the complete withdrawal of subsidies from provincial, commune or private schools providing, in the form of non-subsidised classes and in addition to the instruction given in the language prescribed by the linguistic Acts, full or partial instruction in another language (Sections 1 and 4 of the Act of 20th July 1963, ministerial circulars of 9th and 29th August 1963, etc.).

A further penalty is imposed under Section 19 of the Act of 30th July 1963 which provides that "only school-leaving certificates that have been issued by the educational establishments referred to in Section 1 or in other independent educational establishments in accordance with the provisions of this Act may be subject to homologation". Under paragraph 2 an exception may be made to this principle but does not appear to be applicable to the present case. The 1963 legislation, like that of 1932, leaves intact the possibility of remedying the refusal of homologation by an examination taken before the Central Board.

15. Articles 17 and 23, cited above, of the Belgian Constitution, have not been revised and are therefore still in force. Consequently, children of the Dutch-language area, including Flemish-speaking children, may be taught in their area in French - or in any other language - by their parents, a private tutor or an unsubsidised private School. A head of family who takes advantage of this facility incurs no punishment and is complying with the obligations to have his children educated (see for example Section I of the consolidated Acts of 20th August 1957 on primary education) provided the education given meets academic and technical requirements laid down by law. The same applies, mutatis mutandis, throughout the Kingdom of

Belgium. The 1932 and 1963 Acts have not changed the earlier situation in this respect.

THE LAW

Beyond the six specific questions enumerated in the respective submissions of the Commission and the Belgian Government, the present case raises problems of a more general character concerning the meaning and scope of Article 2 of the Protocol (P1-2) and of Articles 8 and 14 (art. 8, art. 14) of the Convention. The Court will pronounce upon these problems before ruling upon the above-mentioned questions, as the reply to be given to the latter depends to a certain degree on the solution of the former.

I. THE MEANING AND SCOPE OF ARTICLE 2 OF THE PROTOCOL (P1-2) AND OF ARTICLES 8 AND 14 (art. 8, art. 14) OF THE CONVENTION

A. Summary of the arguments presented by the Applicants before or through the Commission and of those presented before the Court by the Belgian Government and by the Commission

1. The wording of the first sentence of Article 2 of the Protocol (P1-2) reads, "No person shall be denied the right to education".

Before the Commission, the Applicants maintained that Article 2 of the Protocol (P1-2) gives rise to "obligations to take action". In this connection, they invoked the spirit and letter of the Convention as well as the reservations and declarations made by several signatory States. They also based their arguments on Articles 17 and 23 of the Belgian Constitution, cited above, and also on Article 6 which guarantees the equality of all Belgians in the eyes of the law. They furthermore emphasised that education in Belgium is both compulsory up to the age of fourteen (Act of 19th May 1914) and free at the nursery, primary and secondary stages in official and subsidised schools (Act of 29th May 1959). Therefore, a modern State like Belgium cannot claim "that it is not obliged to take measures to ensure the free exercise, in this field, of rights which are embodied in, inter alia, its Constitution and the Convention". Admittedly, Article 2 of the Protocol (P1-2) does not oblige the Contracting States to provide or finance education; nor does it prevent them issuing regulations governing admission to the educational facilities which they provide or subsidise, for such regulations can be "justified by perfectly valid reasons". The Applicants however expressed the opinion that once a State undertakes to provide or

subsidise a particular type of education, it must "refrain from any discriminatory measure", as otherwise it violates Article 2 (P1-2). In their opinion this text must be interpreted "in good faith and in all fairness", and its Application may "vary from one State to another depending on the special circumstances peculiar to each State". In particular, the "cultural" right to education, guaranteed by the first sentence, means, on analysis, a "right to the performance of a service", a "right to have the State take action". No doubt Article 2 (P1-2) states this in a negative way but the abandonment of the positive formula which was originally contemplated, does not have the significance which is attributed to it by the respondent Government. "To make existing teaching available to all": this is the service which it is required of Contracting States to perform.

According to the Belgian Government the Convention and the Protocol (P1) are inspired on the whole by the classic conception of freedoms, in contrast to rights, differing in this respect from the Universal Declaration of Human Rights and from the European Social Charter. The individual freedoms place purely negative duties on the governmental authorities (pouvoirs publics) (negative status, status libertatis). The commitments undertaken by the States by virtue of the Convention and the Protocol possess therefore an essentially negative character. This is the case, in particular, with the first sentence of Article 2 of the Protocol (P1-2): it obliges the State "not to prevent persons within its jurisdiction from obtaining education" but does not require it to provide itself "education and teaching for its citizens"; in short, it gives rise "above-all" to a "prohibition against prohibition". In effect, the right to education is stated in negative terms ("No person shall be denied ..."), whereas the Consultative Assembly had advocated in August 1950 a positive formula ("Everyone has the right to ..."). This alteration, introduced in 1951 by the governmental experts, was far from being fortuitous; it shows that the States did not intend to bind themselves "to take positive steps" in the matter. In this respect the "preparatory work" confirms very clearly the conclusions drawn from the text itself; furthermore, the declarations made by the Netherlands (20th March 1952) and by the Federal Republic of Germany (13th February 1957) concerning Article 2 (P1-2) point in the same direction. Consequently the first sentence of Article 2 (P1-2) does not oblige the Contracting States to take any beneficial measures such as the opening or subsidising of schools and official recognition of school-leaving certificates. Nor does it safeguard the right of each person to receive an education in conformity with his cultural and linguistic preferences; these are in no way protected by the second sentence of Article 2 (P1-2), which is limited to demanding respect for "religious and philosophical convictions"; they are, a fortiori, outside the scope of the first sentence. It follows that Article 2 (P1-2) in no wise condemns "a unilingual policy" in the sphere of education; it also leaves to a "bilingual country" the opportunity of deciding that "in order to meet their

scholastic obligations parents must arrange for their children to receive a complete education in the language of the region". On this point, as on others, it is much less generous than Article 17 of the Belgian Constitution. The prohibition of the refusal to anyone of the right to education signifies, for example, that "in the absence of primary education", "the State would not be permitted to oppose the establishment of schools by individuals" and that "individuals would be able", "in certain circumstances at least", "to organise specialised technical education for which the State was unable or unwilling to assume responsibility". As for the idea advanced by the Commission of a right to education the context of which "may vary according to circumstances", the Belgian Government contests its "legal orthodoxy"; it considers that "the right must mean the same thing for all persons under the jurisdiction of the High Contracting Parties".

The Commission confirmed before the Court the opinion which it had expressed on this point in its Report by a majority of seven members out of twelve. In its view the rights recognised by the Convention are not all "negative": "one must examine each question" and "each provision in its own right without being led astray" by a legal theory of "some antiquity" - the classic doctrine of individual freedoms - which "may still have a certain philosophical value" but which "is in no way normative". What is the position in this respect, of the first sentence of Article 2 of the Protocol (P1-2)? It "prohibits States from taking any action that might prevent persons under their jurisdiction from educating themselves". On the other hand, it entails "no positive obligation", "in the sense that they have to make any material provision". This conclusion is to be drawn from the text which "uses a negative formula". It is based furthermore on the "preparatory work": in removing the "positive formula" adopted by the Assembly of the Council of Europe in August 1950, the signatory States intended to ensure that the first sentence of Article 2 (P1-2) "could not be interpreted as placing an obligation on Governments to take effective steps to enable everyone to receive the education he desired". Moreover, if the object of the Protocol had been to oblige States either to provide education themselves or to subsidise private education, such an obligation should have been embodied in rules, even if only approximate. Neither are the Contracting Parties obliged to respect "parents' preferences for a particular language". The Commission emphasises however that "the first sentence of Article 2 of the Protocol (P1-2), despite its negative wording, embodies the right of everyone to education". It is a right "whose scope is not defined or specified in the Convention" and whose content varies "from one time or place to another", according to "economic and social circumstances". Belgium being "a highly developed country", the right to education, "for the purpose of considering the present case", "includes entry to nursery, primary, secondary and higher education"; it implies also "the right to draw the full benefit from the education received", for, "in Belgium's present economic

and social circumstances, as indeed in those of the other countries that have signed the Protocol", one cannot imagine that Article 2 (P1-2) is limited to the safeguarding of the right to a purely humanist education or to education "purely for the love of it". In other respects "the exact scope" of the first sentence of Article 2 (P1-2) may be disputed; "it may be asked, for example, whether once it has set up a system of public education, a State may abandon the entire system and throw the burden on to private enterprise".

The Commission finally recalls that in the opinion of five of the twelve members who were present at the adoption of its Report of 24th June 1965, Article 2 of the Protocol (P1-2) gives rise to positive obligations; it draws the attention of the Court to the individual opinions given on the matter.

2. The wording of the second sentence of Article 2 of the Protocol (P1-2) is as follows: "In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions."

The Applicants asserted before the Commission that the "family" right of parents, guaranteed by this text, has "the same legal force as the other rights and freedoms guaranteed"; the words "shall respect", which during the course of the "preparatory work" replaced the phrase "shall have regard to", which was adjudged to be too vague by the Consultative Assembly, require "positive direct action" on the part of the State. According to the Applicants of Antwerp, Ghent and Vilvorde, moreover, the second sentence of Article 2 (P1-2) does not concern the education and teaching organised by the parents themselves but applies to "that in relation to which the State assumes functions"; it concerns therefore "official teaching and independent teaching subsidised, regulated and controlled" by the public authorities. As regards the "philosophical convictions" they include the "personalist doctrine" which these Applicants "profess"; for the Applicants of Alsemberg, Beersel, Kraainem and Louvain they necessarily include the cultural and linguistic preferences of the parents.

The Belgian Government maintains, on the other hand, that the second sentence of Article 2 (P1-2) gives rise, like the first (P1-2), to a "purely negative obligation". Enshrining "the right of parents to provide education for their children in conformity with their wishes", the sentence implies that the State must not "impede" the exercise of this right; on the other hand, the State remains free to "regulate admission to the education which it itself organises or subsidises" and moreover is not required to place education "organised by parents" "on exactly the same footing as official education, so far as concerns the granting of subsidies and the homologation of diplomas". A study of the "preparatory work" furthermore proves that "the European organs concerned never thought about linguistic problems", but "simply about conflicts on ideological and denominational matters". Consequently, the cultural and linguistic preferences of parents are in no

way comprised within "religious and philosophical convictions" so that the second sentence of Article 2 (P1-2) does not safeguard "the right of parents to have their children taught in the language of their choice". Here too Article 17 of the Belgian Constitution shows itself more generous for it "proclaims the freedom of all education without distinguishing between the motives or convictions that might inspire such education".

According to the Commission which confirmed before the Court the unanimous opinion it had expressed on this matter in its Report, the second sentence of Article 2 of the Protocol (P1-2) does not impose upon States "respect for preferences or opinions in cultural or linguistic matters". Without seeking a definition of the terms "religious and philosophical" in the case, the Commission notes that the draft of the Committee of Experts "at a certain point" in the "preparatory work" made provision only for "the protection of religious opinions but that philosophical opinions were added in order to cover agnostic opinions". It also emphasises that the "Danish Delegation proposed that the text should state the right of parents to send their children to recognised schools where the language of instruction was not that of the country in question"; however "this proposal, for which there was no majority support, was withdrawn". In December 1951 two members of the Consultative Assembly also suggested that "language rights should be recognised", but "no action was taken on these suggestions". Consequently the second sentence of Article 2 (P1-2) does not enshrine "the right of parents to have their children educated in the language of their choice in the sense that the State, in assuming educational functions by the establishment of schools, shall be obliged to take into account parents' preferences for a particular language".

3. Article 8 (art. 8) of the Convention is worded as follows:

> "(1) Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> (2) There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

The Applicants, in particular those of Antwerp, Ghent and Vilvorde, have stated before the Commission how they interpret the notion of "respect for private and family life". In their opinion it implies "the absence of any measure of compulsion concerning the family" and the "legal protection due to the family". The head of the family has inter alia the right to choose as he pleases the language in which his children shall be educated and, if such be the case, the second language which they shall study; he has also the right to maintain the homogeneity and the integrity of the home, including "the personal, absolute and inalienable right that his children should resemble

him intellectually and culturally". As for the child, Article 8 (art. 8) confers on him the right to an education which "will best ensure the fullest development of his personality" by means of conditions in conformity with his "abilities" and his "emotions".

According to the Belgian Government, the obligation resulting from Article 8 (art. 8) possesses a "strictly negative" character: it is purely an obligation of "abstinence from action". The State is not therefore bound to organise its public educational or other services in such a way that all its citizens can enjoy them everywhere with a minimum of inconvenience and discomfort in their private and family life. Besides, the rights of parents in the sphere of education and teaching are defined exclusively by Article 2 of the Protocol (P1-2). Article 8 (art. 8) consequently in no way enshrines rights such as that of the head of the family to "choose freely in what language his children shall be taught". Therefore, legislation concerning schooling cannot violate Article 8 (art. 8): the Belgian Government, modifying slightly its earlier reasoning, "absolutely disputes" before the Court the possibility of any "link" whatsoever "between Article 8 (art. 8) of the Convention and the first sentence of Article 2 of the Protocol (P1-2)".

In the view of the Commission, which confirmed before the Court the unanimous opinion expressed on this point in its Report, Articles 8 and 12 (art. 8, art. 12) of the Convention and Article 2 of the Protocol (P1-2) each govern "a clearly defined sector of private and family life". The Commission deduces from this that "even if it is accepted" that those three provisions might, "in certain circumstances", "be applied jointly or in conjunction", one must beware of interpreting any one of them in a way which would involve an extension of the "rights recognised by the other two". In particular, "it is not conceivable that Article 8 (art. 8) should encroach on the sphere of Article 2 of the Protocol (P1-2) or even less that it should add something to that Article". Any such result would, moreover, "be contrary to the intention of the Contracting Parties as is clearly revealed" by the "preparatory work". The object then of Article 8 (art. 8) "is not to guarantee the right to education, considered as a corollary of the freedom of private life, or the rights of parents with regard to their children's education, considered as a consequence of the right to respect for private and family life". It is not, however, "impossible for educational measures" to infringe Article 8 (art. 8). Thus, "any school system which, without disregarding parents' rights to educate and bring up their children in accordance with their religious and philosophical convictions", sought "to separate parents and children might violate Article 8 (art. 8)". "Similarly, provisions relating to the language of instruction may", "under certain conditions", be considered "incompatible with Article 8 (art. 8)" if they "entail grave disturbances in private or family life", this incompatibility not being due "to the State's failure to respect parents' wishes with regard to the language of education but to the grave and unjustified disturbances caused

in private or family life". Consequently, the Belgian Government is "in error in affirming that the Article has nothing to do with the dispute brought before the Court".

4. Article 14 (art. 14) of the Convention provides that:

> "The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

Before the Commission, the Applicants do not seem to have indicated very clearly whether or not in their view, the violation of Article 14 (art. 14) presupposes that of one of the Articles which defines the rights and freedoms guaranteed. They have stated, on the other hand, their interpretation of Article 14 (art. 14) on several issues. In the first place they expressed the opinion that the word "secured" implies the existence of obligations upon the Contracting States to take action and not simply a duty to abstain from action. Moreover they admitted that Article 14 (art. 14), despite the categorical words of the French version ("sans distinction aucune"), only forbids distinctions of a "discriminatory" character, a discrimination consisting "of an act or omission attributable to the public authorities" and introducing an inequality of treatment of an arbitrary nature. A distinction designed "to re-establish rather than to destroy equality" or based on "valid reasons" is therefore completely "legitimate". However a "legitimate distinction" sometimes turns in the long run into a "wrongful discrimination" having survived the achievement of its initial aim. Certain discriminations, the gravest ones, derive from the "deliberate will of governments" ("active" discriminations); others have their "origin in factors of an economic, social or political nature" or in "historical circumstances" ("static" discriminations). On this point, the Applicants have cited extracts from a report of Mr. Charles Ammoun (Lebanon) drawn up in 1956 for the United Nations Commission on Human Rights. They also referred many times to the Convention and the Recommendation "against discrimination in education" adopted on 14th December 1960 by the General Conference of UNESCO.

The Belgian Government had submitted, before the Commission, that "a violation of Article 14 (art. 14) without simultaneous violation of another Article of the Convention is legally impossible"; it based its argument on the words "rights and freedoms set forth in this Convention" and on the decisions of the Commission. Since then there has been a change in its views on this matter. During the first phase of the proceedings before the Court (preliminary objection), the Belgian Government emphasised that Article 14 (art. 14) does not form part of the enumeration of rights and freedoms in Articles 2-13 of the Convention (art. 2, art. 3, art. 4, art. 5, art. 6, art. 7, art. 8, art. 9, art. 10, art. 11, art. 12, art. 13) and Articles 1-3 of the Protocol (P1-1, P1-2, P1-3), for it does no more than prohibit any

discrimination in the enjoyment of these rights and freedoms. Article 14 (art. 14) is not, therefore, either separately or in conjunction with other Articles of the Convention or the Protocol, the source of any rights not enshrined in the Convention and the Protocol; equally it does not transform the negative obligations resulting from these instruments into duties to provide something. In reality its function is to determine the exact sphere of Application ratione personae of the rights and freedoms safeguarded. Consequently, a breach of Article 14 (art. 14) is inconceivable without a simultaneous violation of an Article protecting a right or freedom unless that Article imposes positive obligations. However, the Articles invoked by the Applicants in conjunction with Article 14 - Article 8 (art. 14+8) of the Convention and Article 2 of the Protocol (art. 14P1-2) - give rise purely to obligations of non-interference. After the judgment of 9th February 1967, the Belgian Government completed and slightly modified its argument on the point in question. In its opinion, the first decisions of the Commission seemed to indicate that Article 14 (art. 14) "served no practical legal purpose and that its presence in the Convention was purely psychological in intention". More recently the Commission has sought to "reconcile two at first sight incompatible principles, firstly that Article 14 (art. 14) should serve a practical legal purpose", and secondly that it "relates only to the rights and freedoms safeguarded". The Belgian Government does not dispute "the merits" of such an "attempted legal analysis"; however, the solution adopted by the Commission does not seem to it to "pay sufficient regard to the second principle". For in its opinion "the practical effect of Article 14 (art. 14)" is limited to two cases: "where the provisions of the Convention and Protocol place on the High Contracting Parties positive obligations, compliance with which necessitates action by the authorities of these States" (e.g. Article 6 (art. 6) of the Convention and Article 3 of the Protocol (P1-3)) and where they create "negative or self-executing obligations" but "exceptionally allow" the States to "derogate from these obligations in certain circumstances" (e.g. Articles 2-5 of the Convention (art. 2, art. 3, art. 4, art. 5) and paragraph 2 of Articles 8-11 (art. 8-2, art. 9-2, art. 10-2, art. 11-2)). This does not hold good in a third situation, that of an Article which "places on States a mere duty to refrain from action but contains no general stipulation concerning exceptions or derogations" (e.g. Article 2 of the Protocol) (P1-2). Article 14 (art. 14) does not apply to "positive benefits" and "favours" that a State may, without being bound to do so by the Convention, "grant" in order to "facilitate the exercise" of a freedom safeguarded by an Article of this kind: to accept the contrary view is to "turn a negative obligation into a positive one", "in certain circumstances", an act which is in no way authorised by the Convention and the Protocol.

On the question of Article 14 (art. 14) the Belgian Government developed other arguments rather of a subsidiary nature. It considers, as do

the Applicants and the Commission, that Article 14 (art. 14) does not prohibit every inequality of treatment in the enjoyment of the rights and freedoms safeguarded. What then is to be understood by a "discrimination" as opposed to a "distinction" or a legitimate "differentiation"? According to the Belgian Government the Court is empowered to decide "what constitutes discrimination", but its power "conflicts to some extent with the functions of the State". The general and specific objects which a Government seeks to achieve, and the means it uses for the purpose, are within its own jurisdiction; "in case of doubt it must be presumed" that these objects and means are "reasonable"; quite exceptional cases excluded, it is enough, for a State to justify its action, to invoke "a legitimate and avowable motive". The European jurisdictions would be acting outside the limits of their attributed powers if they were to review the legitimacy, the equity and the desirability of the actions of States; they would "inevitably" be led "to take up political attitudes in their decisions", a result not "in accordance with the intention of the High Contracting Parties". There would be a veritable "political tutelage" of democratic Parliaments, which are the only judges of the requirements of the national sentiment. The distinction, proposed by the Commission, between "privileges" and "hardships", lacks clarity; "the only correct way of stating the problem" consists, in the present case, in asking whether "by conferring certain privileges solely on education given in the regional language" the Belgian legislation "deprives" education given in some other language "of a right safeguarded by the Convention or Protocol".

In its opinion of 24th June 1965, the Commission expressed the view that although Article 14 (art. 14) is not at all applicable to rights and freedoms not guaranteed by the Convention and Protocol, its applicability "is not limited to cases in which there is an accompanying violation of another Article". In the view of the Commission "such a restrictive application" would conflict with the principle of effectiveness established by the case law of the Permanent Court of International Justice and the International Court of Justice, for the discrimination would be limited to the aggravation "of the violation of another provision of the Convention". The Commission is, moreover, of the opinion that such an interpretation would be in ill accord "with the wording of Article 14 (art. 14)": in its opinion the word "secured" implies the placing of "an obligation which is not simply negative" on the Contracting States. Article 14 (art. 14) "is of particular importance in relation to those clauses" which "do not precisely define the rights" which they enshrine, but "leave States a certain margin of appreciation with regard to the fulfilment of their obligation", "authorise restrictions on, or exceptions to the rights guaranteed" or "up to a point leave it to the States to choose the appropriate means to guarantee a right". It concerns "the means or the extent, of the enjoyment of rights and freedoms already stated elsewhere". "Different measures taken by a State in

respect of different parts of its territory or population" may therefore, even if compatible with the Article which safeguards the right, entail a failure to comply with the requirements of the Convention "if the State's conduct is judged from the point of view of Article 14 (art. 14)"; "the question would then arise of a violation not only of Article 14 (art. 14) but of the right in question, as mentioned in the relevant Article in conjunction with Article 14 (art. 14)".

Before the Court, the Commission admitted that "until recently", its views "were not very clearly defined" on the question of the "scope" of Article 14 (art. 14). It nevertheless confirmed the opinion maintained in its Report of 24th June 1965; it sought to illustrate it by the use of concrete examples concerning Articles 2, 3, 4, 5, 6 and 9 of the Convention (art. 2, art. 3, art. 4, art. 5, art. 6, art. 9) and Article 1 of the Protocol (P1-1). In its opinion Article 14 (art. 14) "has a practical effect" even outside the two situations in which the Belgian Government does not dispute its "autonomous rôle". It can, in particular, reinforce "the guarantee of rights and freedoms" which require States to take certain "legislative or executive action", which is of a limited nature. Thus, Article 6 (art. 6) requires States "to set up tribunals" to determine civil cases and "any criminal charge"; it does not however require them "to set up Courts of Appeal". A State which does set up such courts, would consequently go beyond its positive obligations derived from Article 6 (art. 6); it would, however, be bound by virtue of Article 14 (art. 14) and not Article 6 (art. 6) to make such courts available to all, and the Belgian Government has moreover admitted this. Article 14 (art. 14) applies also "to the guaranteeing of rights and freedoms which only impose on States a duty to refrain from action", "without conferring on them any power to intervene". Such is the case in relation to the first sentence of Article 2 of the Protocol (P1-2). "Despite its negative wording", it embodies "the right of everyone to education". The Commission deduces from this that "the enjoyment of that right must be secured to everyone in the Contracting States without discrimination": "if a country has education organised by the public authorities, that education cannot be denied to anyone", without opening the door "to all kinds of discrimination in education". For there to be a violation of Article 14 in conjunction with Article 2 of the Protocol (art. 14+P1-2), it is enough for the discrimination in issue to "touch the enjoyment of a specific right or freedom already comprised within the right to education". In short, it is necessary for Article 2 (P1-2) to be read "as though Article 14 (art. 14) were its third paragraph, so to speak". Article 14 (art. 14) gives rise therefore to obligations "in addition to", "independent of the nature" of those, whether positive or negative, which result from "the rest of the Convention". The effect of the Commission's thesis is in no way to transform duties "to refrain from interfering" into duties "to provide something": it means that when a State "without being under any obligation to do so", takes positive action

with regard to the rights laid down in the Convention, it must do so without discrimination. In the sphere of education, "the obligation not to discriminate" is neither "positive" nor "negative" but "conditional": "If the State assumes", quite freely, "functions" in this sphere, it "must carry them out in a non-discriminatory manner".

The Commission, referring to "contemporary theory" and to its own decisions is of the opinion that the Convention does not prohibit the establishment of legitimate "differentiation" in the enjoyment of the rights and freedoms guaranteed: an "extensive interpretation" based on the French text of Article 14 (art. 14) ("sans distinction aucune"), "would lead to absurd results". Article 14 (art. 14) condemns only "discrimination", and the Commission makes a point of stating precisely how it understands this word. In its opinion a State does not discriminate if it limits itself to conferring an "advantage", a "privilege" or a "favour" on a particular group or individual which it denies to others. The question of a possible discrimination arises only if the difference in treatment in issue amounts to a "hardship" inflicted on certain people. Further it is necessary that the so termed "hardship" should not be justified by "considerations based on the general interest" and, in particular, by "administrative or financial" needs. The "motives" and the "philosophy" which have inspired the Government are to be taken into account in this context but it is likewise necessary to see whether such motives and philosophy as are regarded as "legitimate" have inspired measures which are incompatible with the rights and freedoms safeguarded including "the right to non-discrimination". "The appraisal" of the "public interest" is not "exempt from review by the organs" established "for the implementation of the Convention". "Several Articles" of the Convention, for example, Articles 8-11 (art. 8, art. 9, art. 10, art. 11), and Article 15 (art. 15) "are worded in such a way as to require what might be called political judgments"; however, "the Commission has constantly taken the view, with which the Court agreed in the Lawless case", that the organs set up to ensure respect for the Convention are empowered to make "such judgments"; if this were not so, "the international protection of human rights" would lose "its effectiveness" and "its very meaning". The position is the same with respect to Article 14 (art. 14): if it is accepted "that certain differentiations may be justified on reasonable and legitimate grounds", the idea of "international review" requires that the Commission and the Court "attempt to verify the motives of the legislative body as well as the aims and effects of the legislation". To examine whether those motives are "reasonable", those aims "legitimate" and those effects "justifiable", in no way amounts to placing under "tutelage" the Contracting States, to which the Commission in any case reserves a "certain margin of discretion".

Two of the members who were present at the adoption of the Report of 24th June 1965 do not believe that Article 14 (art. 14) has an autonomous field of application; two others do not accept the distinction established by

the majority between "privileges" and "hardships", and a fifth disputes the relevance of "administrative and financial needs". The Commission draws the attention of the Court to these individual opinions.

B. Interpretation adopted by the Court

1. The Court, in examining the complaints which have been referred to it, is at the outset confronted with the general question as to the extent to which any of the Articles of the Convention or Protocol may contain provisions touching the rights or freedoms of a child with respect to his education or of a parent with respect to the education of his child, and more especially in the matter of the language of instruction.

The Court notes that although certain further Articles (Articles 9 and 10 of the Convention) (art. 9, art. 10) were invoked by the Applicants before the Commission, it is Article 2 of the Protocol (P1-2) and Articles 8 and 14 of the Convention (art. 8, art. 14) alone which are dealt with in the arguments and submissions both of the Commission and the Belgian Government. While the provisions of the Convention and Protocol must be read as a whole, the Court considers that it is essentially upon the content and scope of these three Articles that the decision which it has to take turns.

2. The Court will address itself first to Article 2 of the Protocol (P1-2) because the Contracting States made express provision with reference to the right to education in this Article.

3. By the terms of the first sentence of this Article (P1-2), "no person shall be denied the right to education".

In spite of its negative formulation, this provision uses the term "right" and speaks of a "right to education". Likewise the preamble to the Protocol specifies that the object of the Protocol lies in the collective enforcement of "rights and freedoms". There is therefore no doubt that Article 2 (P1-2) does enshrine a right.

It remains however to determine the content of this right and the scope of the obligation which is thereby placed upon States.

The negative formulation indicates, as is confirmed by the "preparatory work" (especially Docs. CM/WP VI (51) 7, page 4, and AS/JA (3) 13, page 4), that the Contracting Parties do not recognise such a right to education as would require them to establish at their own expense, or to subsidise, education of any particular type or at any particular level. However, it cannot be concluded from this that the State has no positive obligation to ensure respect for such a right as is protected by Article 2 of the Protocol (P1-2). As a "right" does exist, it is secured, by virtue of Article 1 (art. 1) of the Convention, to everyone within the jurisdiction of a Contracting State.

To determine the scope of the "right to education", within the meaning of the first sentence of Article 2 of the Protocol (P1-2), the Court must bear in mind the aim of this provision. It notes in this context that all member States

of the Council of Europe possessed, at the time of the opening of the Protocol to their signature, and still do possess, a general and official educational system. There neither was, nor is now, therefore, any question of requiring each State to establish such a system, but merely of guaranteeing to persons subject to the jurisdiction of the Contracting Parties the right, in principle, to avail themselves of the means of instruction existing at a given time.

The Convention lays down no specific obligations concerning the extent of these means and the manner of their organisation or subsidisation. In particular the first sentence of Article 2 (P1-2) does not specify the language in which education must be conducted in order that the right to education should be respected. It does not contain precise provisions similar to those which appear in Articles 5 (2) and 6 (3) (a) and (e) (art. 5-2, art. 6-3-a, art. 6-3-e). However the right to education would be meaningless if it did not imply in favour of its beneficiaries, the right to be educated in the national language or in one of the national languages, as the case may be.

4. The first sentence of Article 2 of the Protocol (P1-2) consequently guarantees, in the first place, a right of access to educational institutions existing at a given time, but such access constitutes only a part of the right to education. For the "right to education" to be effective, it is further necessary that, inter alia, the individual who is the beneficiary should have the possibility of drawing profit from the education received, that is to say, the right to obtain, in conformity with the rules in force in each State, and in one form or another, official recognition of the studies which he has completed. The Court will deal with this matter in greater detail when it examines the last of the six specific questions listed in the submissions of those who appeared before it.

5. The right to education guaranteed by the first sentence of Article 2 of the Protocol (P1-2) by its very nature calls for regulation by the State, regulation which may vary in time and place according to the needs and resources of the community and of individuals. It goes without saying that such regulation must never injure the substance of the right to education nor conflict with other rights enshrined in the Convention.

The Court considers that the general aim set for themselves by the Contracting Parties through the medium of the European Convention on Human Rights, was to provide effective protection of fundamental human rights, and this, without doubt not only because of the historical context in which the Convention was concluded, but also of the social and technical developments in our age which offer to States considerable possibilities for regulating the exercise of these rights. The Convention therefore implies a just balance between the protection of the general interest of the Community and the respect due to fundamental human rights while attaching particular importance to the latter.

6. The second sentence of Article 2 of the Protocol (P1-2) does not guarantee a right to education; this is clearly shown by its wording:

> "...
>
> 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."

This provision does not require of States that they should, in the sphere of education or teaching, respect parents' linguistic preferences, but only their religious and philosophical convictions. To interpret the terms "religious" and "philosophical" as covering linguistic preferences would amount to a distortion of their ordinary and usual meaning and to read into the Convention something which is not there. Moreover the "preparatory work" confirms that the object of the second sentence of Article 2 (P1-2) was in no way to secure respect by the State of a right for parents to have education conducted in a language other than that of the country in question; indeed in June 1951 the Committee of Experts which had the task of drafting the Protocol set aside a proposal put forward in this sense. Several members of the Committee believed that it concerned an aspect of the problem of ethnic minorities and that it consequently fell outside the scope of the Convention (see Doc. CM (51) 33 final, page 3). The second sentence of Article 2 (P1-2) is therefore irrelevant to the problems raised in the present case.

7. According to the express terms of Article 8 (1) (art. 8-1) of the Convention, "everyone has the right to respect for his private and family life, his home and his correspondence".

This provision by itself in no way guarantees either a right to education or a personal right of parents relating to the education of their children: its object is essentially that of protecting the individual against arbitrary interference by the public authorities in his private family life.

However, it is not to be excluded that measures taken in the field of education may affect the right to respect for private and family life or derogate from it; this would be the case, for instance, if their aim or result were to disturb private or family life in an unjustifiable manner, inter alia by separating children from their parents in an arbitrary way.

As the Court has already emphasised, the Convention must be read as a whole. Consequently a matter specifically dealt with by one of its provisions may also, in some of its aspects, be regulated by other provisions of the Convention.

The Court will therefore examine the facts of the case in the light of the first sentence of Article 2 of the Protocol (P1-2) as well as of Article 8 (art. 8) of the Convention.

8. According to Article 14 (art. 14) of the Convention, the enjoyment of the rights and freedoms set forth therein shall be secured without

discrimination ("sans distinction aucune") on the ground, inter alia, of language; and by the terms of Article 5 of the Protocol (P1-5), this same guarantee applies equally to the rights and freedoms set forth in this instrument. It follows that both Article 2 of the Protocol (P1-2) and Article 8 (art. 8) of the Convention must be interpreted and applied by the Court not only in isolation but also having regard to the guarantee laid down in Article 14 (art. 14+P1-2, art. 14+8).

9. While it is true that this guarantee has no independent existence in the sense that under the terms of Article 14 (art. 14) it relates solely to "rights and freedoms set forth in the Convention", a measure which in itself is in conformity with the requirements of the Article enshrining the right or freedom in question may however infringe this Article when read in conjunction with Article 14 (art. 14) for the reason that it is of a discriminatory nature.

Thus, persons subject to the jurisdiction of a Contracting State cannot draw from Article 2 of the Protocol (P1-2) the right to obtain from the public authorities the creation of a particular kind of educational establishment; nevertheless, a State which had set up such an establishment could not, in laying down entrance requirements, take discriminatory measures within the meaning of Article 14 (art. 14).

To recall a further example, cited in the course of the proceedings, Article 6 (art. 6) of the Convention does not compel States to institute a system of appeal courts. A State which does set up such courts consequently goes beyond its obligations under Article 6 (art. 6). However it would violate that Article, read in conjunction with Article 14 (art. 14+6), were it to debar certain persons from these remedies without a legitimate reason while making them available to others in respect of the same type of actions.

In such cases there would be a violation of a guaranteed right or freedom as it is proclaimed by the relevant Article read in conjunction with Article 14 (art. 14). It is as though the latter formed an integral part of each of the Articles laying down rights and freedoms. No distinctions should be made in this respect according to the nature of these rights and freedoms and of their correlative obligations, and for instance as to whether the respect due to the right concerned implies positive action or mere abstention. This is, moreover, clearly shown by the very general nature of the terms employed in Article 14 (art. 14): "the enjoyment of the rights and freedoms set forth in this Convention shall be secured".

10. In spite of the very general wording of the French version ("sans distinction aucune"), Article 14 (art. 14) does not forbid every difference in treatment in the exercise of the rights and freedoms recognised. This version must be read in the light of the more restrictive text of the English version ("without discrimination"). In addition, and in particular, one would reach absurd results were one to give Article 14 (art. 14) an interpretation as wide as that which the French version seems to imply. One would, in effect, be

led to judge as contrary to the Convention every one of the many legal or administrative provisions which do not secure to everyone complete equality of treatment in the enjoyment of the rights and freedoms recognised. The competent national authorities are frequently confronted with situations and problems which, on account of differences inherent therein, call for different legal solutions; moreover, certain legal inequalities tend only to correct factual inequalities. The extensive interpretation mentioned above cannot consequently be accepted.

It is important, then, to look for the criteria which enable a determination to be made as to whether or not a given difference in treatment, concerning of course the exercise of one of the rights and freedoms set forth, contravenes Article 14 (art. 14). On this question the Court, following the principles which may be extracted from the legal practice of a large number of democratic States, holds that the principle of equality of treatment is violated if the distinction has no objective and reasonable justification. The existence of such a justification must be assessed in relation to the aim and effects of the measure under consideration, regard being had to the principles which normally prevail in democratic societies. A difference of treatment in the exercise of a right laid down in the Convention must not only pursue a legitimate aim: Article 14 (art. 14) is likewise violated when it is clearly established that there is no reasonable relationship of proportionality between the means employed and the aim sought to be realised.

In attempting to find out in a given case, whether or not there has been an arbitrary distinction, the Court cannot disregard those legal and factual features which characterise the life of the society in the State which, as a Contracting Party, has to answer for the measure in dispute. In so doing it cannot assume the rôle of the competent national authorities, for it would thereby lose sight of the subsidiary nature of the international machinery of collective enforcement established by the Convention. The national authorities remain free to choose the measures which they consider appropriate in those matters which are governed by the Convention. Review by the Court concerns only the conformity of these measures with the requirements of the Convention.

11. In the present case the Court notes that Article 14, even when read in conjunction with Article 2 of the Protocol (Art. 14+P1-2), does not have the effect of guaranteeing to a child or to his parent the right to obtain instruction in a language of his choice. The object of these two Articles (art. 14+P1-2), read in conjunction, is more limited: it is to ensure that the right to education shall be secured by each Contracting Party to everyone within its jurisdiction without discrimination on the ground, for instance, of language. This is the natural and ordinary meaning of Article 14 read in conjunction with Article 2 (art. 14+P1-2). Furthermore, to interpret the two provisions as conferring on everyone within the jurisdiction of a State a

right to obtain education in the language of his own choice would lead to absurd results, for it would be open to anyone to claim any language of instruction in any of the territories of the Contracting Parties.

The Court notes that, where the Contracting Parties intended to confer upon everyone within their jurisdiction specific rights with respect to the use or understanding of a language, as in Article 5 (2) and Article 6 (3) (a) and (e) (art. 5-2, art. 6-3-a, art. 6-3-e) of the Convention, they did so in clear terms. It must be concluded that if they had intended to create for everyone within their jurisdiction a specific right with respect to the language of instruction, they would have done so in express terms in Article 2 of the Protocol (P1-2). For this reason also, the Court cannot attribute to Article 14, when read in conjunction with Article 2 of the Protocol (art. 14+P1-2), a meaning which would secure to everyone within the jurisdiction of a Contracting Party a right to education conducted in the language of his own choice.

It remains true that, by virtue of Article 14 (art. 14), the enjoyment of the right to education and the right to respect of family life, guaranteed respectively by Article 2 of the Protocol (P1-2) and Article 8 (art. 8) of the Convention, are to be secured to everyone without discrimination on the ground, inter alia, of language.

12. In order to determine the questions referred to it, the Court will therefore examine whether or not there exist in the present case unjustified distinctions, that is to say discriminations, which affect the exercise of the rights enshrined in Article 2 of the Protocol and Article 8 of the Convention, read in conjunction with Article 14 (art. 14+P1-2, art. 14+8). In this examination, the Court will take into account the factual and legal features that characterise the situation in Belgium, which is a plurilingual State comprising several linguistic areas.

II. THE SIX QUESTIONS REFERRED TO THE COURT

1. Having thus pronounced upon the meaning and scope of Article 2 of the Protocol (P1-2) and Articles 8 and 14 (art. 8, art. 14) of the Convention, the Court has examined the six particular questions enumerated in the submissions of those appearing before it (cf. pages 9-10 and 11-12 supra). The decision to which it has come on each of the questions is preceded by a summary of the relevant facts - in so far as they have not been stated above - and of the respective arguments of the Applicants, the Belgian Government and the Commission.

A. As to the first question

2. The first question concerns the laws on the use of languages in education in the regions considered by the law as being unilingual, except

for two aspects which are dealt with under the second and sixth questions. It relates, more precisely, to whether or not in the case of the Applicants, there is a violation of Article 2 of the Protocol (P1-2) and Articles 8 and 14 (art. 8, art. 14) of the Convention, or of any of those Articles :

> "in so far as the Acts of 1932 prevented, and those of 1963 prevent, the establishment or the subsidisation by the State, of schools not in conformity with the general linguistic requirements".

3. On this point the facts of the case appear sufficiently from the general outline of the Acts in issue which the Court has given above (pages 13-19).

1. Arguments presented by the Applicants before or through the Commission

4. According to the Applicants, the laws on the use of languages in education in the unilingual regions infringe Article 2 of the Protocol (P1-2) and Articles 8 and 14 (art. 8, art. 14) of the Convention.

The Acts of 1932 and 1963 do not, in the first place, comply with the two sentences of Article 2 of the Protocol (P1-2). The Belgian State denies the children of the Applicants a complete education in their maternal language. This refusal is made even more rigid since the Act of 30th July 1963 has, in spite of the increase in the French-speaking population, brought about the progressive abolition of transmutation classes and special language classes which in the view of the Applicants constituted "a lesser evil". The parents' linguistic aspirations are moreover disregarded; primary education being compulsory, many of the Applicants are obliged, in practice, to send their children to schools where the teaching is given in Dutch. Admittedly, the legislation under attack does not prohibit children from pursuing their studies in French but the loopholes open to them are utopian and illusory. It is beyond the power of the Applicants to have their children taught at home. As for sending them to Brussels, Wallonia or abroad, there are material and moral obstacles to this solution which are often insuperable. Lastly, the establishment of private French-language schools in Flanders likewise offers only a rather theoretical remedy by reason of the high costs resulting from the absence of subsidies.

The complaints founded on Article 8 (art. 8) of the Convention are essentially based on the same facts. The Belgian legislation on the use of languages threatens the children's intellectual and emotional development, prevents the head of the family from deciding in what language his children shall be taught, and interferes with the unity of the family by making the Applicants send their children either to local schools where teaching is conducted in Dutch, "instruments of forced depersonalisation", or to schools far from their homes. The inconveniences of "scholastic emigration", although not dictated by the Act, are nevertheless a direct consequence of it.

The Applicants and their children are thus victims of various acts of interference in their private and family life.

Finally the Acts in issue involve a series of discriminations contrary to Article 14 (art. 14) of the Convention which are founded, inter alia, on the language and financial assets of parents. Thus French-speaking children in Flanders are denied a public or subsidised education in their mother tongue while Flemish-speaking children do have such an education there. "Scholastic emigration" for its part redresses certain inequalities only to replace them by others: extra expense, dangers inherent in public transport, the rupture of the family, etc. This is not a question of "legitimate differentiations" but of "discriminations" and what is more, of "active" as opposed to "static" discriminations. The "parallelism" established by the law between the two main regions of the country is "more apparent than real"; moreover, it cannot redress the discriminations committed, in Flanders as well as in Wallonia, to the detriment of those speaking a different language, for the Convention proclaims "equality between men and not between inorganic communities". Admittedly the "Flemish movement" originally fought "for the promotion of the Flemish man", which could perhaps possibly explain certain discriminatory measures of a temporary character: however it is today still "in full career" and is being transformed into "an instrument of authoritarian imperialism" aiming at binding the individual to the soil. Indeed, the present purpose of the legislation consists in "assimilating part of the population by compulsion" and especially in "liquidating the French-speaking minorities" in Flanders by obliging their members to become "Flemicised" or to "move away". The incontrovertible "abuses" of "the last century" were remedied a "long time ago" and in no way justify "the opposite abuse" introduced "by the 1932 legislation and markedly aggravated by that of 1963". Under the pretence of "safeguarding national unity", "the country has been divided" thus producing, despite the official intentions, a "revival of the separatist and federalist tendencies". The Applicants from Alsemberg, Beersel, Kraainem and Louvain also attack the suppression of the linguistic part of the population census (Act of 24th July 1961 and Royal Decree of 3rd November 1961).

2. Arguments presented before the Court by the Belgian Government and by the Commission

5. Before the Commission, the Belgian Government held that the laws on the use of languages in education in the unilingual regions violate none of the three Articles (art. 8, art. 14, P1-2) invoked by the Applicants. While its principal argument was that the Articles were totally inapplicable (cf. supra), it presented several subsidiary arguments.

Concerning Article 2 of the Protocol (P1-2) and Article 8 (art. 8) of the Convention, the Belgian Government in substance observed that the inconveniences resulting from the system in dispute had been over-

estimated by the Applicants. The interests involved are those of "a small minority of the Belgian people". Furthermore there is "nothing catastrophic" in the possible sending of a French-speaking pupil to a Dutch-language school. He will thus have the opportunity of becoming "perfectly bilingual"; the best solution of the linguistic problem in Belgium lies in bilingualism. Besides, there exist in Flanders private schools where education is conducted in French; it is true that they enjoy "fewer advantages" and in particular they do not receive subsidies but the cost falling upon parents is in no way ruinous, the more so in that the Applicants are said to be comfortably off financially. For the same reasons, the expenses inherent in "scholastic emigration" are "not in the least prohibitive"; the distances to be covered do not exceed a few kilometres or dozens of kilometres and the exceptional frequency of the Belgian railway system allows journeys to be accomplished quickly.

The differential treatment of which the Applicants complain does not in any way amount to discrimination contrary to Article 14 (art. 14) of the Convention. The legislation which has been criticised ensures "a strict parallelism between the regulations for the Dutch-speaking and French-speaking areas". Furthermore, it was passed by very large majorities of chambers elected by universal suffrage. In spite of some "inevitable imperfections", it represents a democratic compromise between "values of liberty and social values". The Belgian Parliament in no way seeks the "liquidation" of French-speaking minorities in Flanders. In reality it succeeded in its attempt to exorcise "the grave national crises" caused by "Flemish separatism" (1932 Acts) and Flemish and Walloon federalism (Act of 24th July 1961 and 1963 Acts), to rehabilitate "Flemish language and Flemish culture" by developing an "intelligentsia with a good knowledge of Dutch", able to play a formative rôle and, in a more general sense, to give to the country a stable structure based mainly on two large homogeneous regions and a bilingual capital. More especially the Act of 24th July 1961, which suppressed the linguistic part of the population census - the accuracy of which gave rise to discussion - aimed at avoiding the hurling of the two communities "periodically into a confrontation so bitter as to be an undoubted political danger". Such aims are in no way arbitrary or discriminatory. Indeed the whole of the Belgian language legislation may be analysed as a "refusal to discriminate".

The Belgian Government returned to some of those arguments before the Court but without pressing them strongly; it observed that its thesis coincided for the most part, on the question under consideration, with the opinion of the Commission to which it expressly referred.

6. The Commission is of the view that the laws on the use of languages in education in the unilingual regions do not conflict with the requirements of the Convention and Protocol; before the Court it confirmed the opinion expressed by the majority on this point in the Report.

The absence of any violation of Article 2 of the Protocol (P1-2) follows, in the view of the Commission (cf. supra), from the fact that the first sentence of this provision obliges States neither to establish nor to subsidise any teaching whatsoever (seven votes against five) and that the second does not safeguard respect for the cultural or linguistic preferences of parents (unanimity). The Commission recalls however that in the opinion of five of its members, the first sentence of Article 2 (P1-2) gives rise to duties to take positive steps. Two of these members nevertheless arrive at the same conclusion as the majority; for the other three, however, "the refusal (...) to organise or subsidise French education at the compulsory primary level in the Flemish areas cannot be reconciled with Article 2 of the Protocol (P1-2)".

The laws on the use of languages in education in the unilingual regions likewise do not disregard Article 8 (art. 8) of the Convention. Certainly it is possible to imagine that they affect the "private and family life" of the Applicants, causing it "grave and unjustified disturbances" (cf. supra). The question arises however only in relation to primary education, which is the only compulsory education in Belgium. Some of the various solutions open to the Applicants, namely having their children taught at home, sending them to school abroad, or sending them to a private school in Flanders providing education in French, are out of the question for "the immense majority of heads of families" by reason of their "high cost". There remain therefore recourse to "scholastic emigration", and sending the children to a Dutch-language school. Scholastic emigration - daily "commuting" or boarding out - presents "very serious hardships", but these hardships are "not dictated by the Act itself", "otherwise they would represent a violation of Article 8 (art. 8)": they result from the "wishes of the parents" who are able to "avoid them by enrolling their children in local Flemish-speaking establishments". "The need to send children to a Flemish school" does not constitute "an interference in private or family life". Although the abolition of transmutation classes and special language classes (Act of 30th July 1963) seems "regrettable" in its view, the Commission thinks that "French-speaking parents will generally have the opportunity to react in their homes against the 'depersonalisation' or 'flemicisation' of their children", as the pupils "will usually after a short transitional period, be able to follow with profit the instruction they receive in Dutch" and the majority of parents "will be able to supervise their children's education": "it is difficult to imagine that people living permanently in the region will be totally ignorant of its language" which is "one of the national languages of Belgium". It may no doubt happen that "children may encounter serious difficulty in learning Dutch and that their parents may be totally ignorant of the language", but the Applicants have not cited "any case of this kind". Two members of the Commission are of the opinion that "the legislation in dispute" has "effects contrary to Article 8 (art. 8)", but "the Commission has not sufficient

information to be able to judge in concreto whether the Applicants, or some of them at least, are victims of these effects"; the Commission draws the attention of the Court to their dissenting opinions.

Finally, the Commission seeks to determine whether, on the point under consideration, there is a violation of Article 14 of the Convention, read in conjunction with Article 2 of the Protocol (art. 14+P1-2) or Article 8 (art. 14+8) of the Convention. After emphasising that "a language system for education, organised on a territorial basis", is not necessarily contrary to the Convention, as it "might be justified" by "administrative, financial or other considerations", it examines in detail the legislation criticised by the Applicants with a view to discovering its "general effect". In its view, this study shows that the legislation in dispute "has neither the object nor the effect of ensuring the qualifications thought necessary for the exercise of certain functions or professions, nor indeed of ensuring linguistic knowledge". It proves also that "the language reforms" aimed "initially at removing the abuses which had occurred in the nineteenth century under the system of absolute linguistic freedom, the whole brunt of which had been borne by the Dutch-speaking population", but that the Acts of 1932 and 1963 had "reversed the position". "The parallelism established between the Flemish and Walloon regions" is "not complete, at least under the 1963 Acts"; further still it operates in practice "against French-speaking people living in the Flemish region" while "it hardly affects the Flemish population of Wallonia". "In so far as it is real" it further has the effect of "introducing distinctions in each of the two regions" which "are not affected by their reciprocal character". "The loopholes provided for the French-speaking population", in particular scholastic emigration, entail "inconvenience and dangers" which make them "ineffective". "What is more, certain provisions in the Acts concerned" exceed their official purpose: "they can only be explained by a desire to halt the spread of the French language in the Flemish zone", indeed to assimilate the "French-speaking population of Flanders", against their will, "into the sphere of the language of the region". Although "The Commission readily understands the attachment of the Flemish population to their language and culture and their desire to preserve and develop them", and although "a policy which reflects such aspirations therefore appears quite legitimate in itself", it cannot consequently "find it illegitimate that French-speaking people living in Flanders should seek to protect their own language" which "has been established there for centuries". Without disputing the fact that the Belgian Government is "entitled to refrain from positive action to meet the wishes of the French-speaking population", the Commission questions "the result of a policy which thwarts them by measures of compulsion and by penalties". Is not such a policy in danger of "producing wrongs similar to those" which existed in the past, but "with the difference that this time it is the French-speaking population which would suffer"? "In any event" a reading of the

documents shows "clearly, in the view of the majority of the Commission, the intention of the Belgian Government and of the Belgian legislature to place the French speaking population in the Flemish region at a disadvantage in relation to the Dutch-speaking inhabitants"; the 1932 legislation created "numerous inequalities which have been markedly aggravated by the 1963 legislation to the detriment of the former and the benefit of the latter".

In the opinion of the Commission, the inequalities derived from the laws on the use of languages in education in the unilingual regions do not however constitute discrimination contrary to Article 14 (art. 14). Despite the fact that the Belgian Government has not shown the necessity for "these inequalities and disadvantages", that "a double system of education, both Dutch and French", would certainly be sufficient to remove the wrongs which existed in the past, that unilingualism is not based on "financial, technical or administrative" requirements, and that no account is taken of the "number or degree of French-speaking persons" living in Flanders, five members of the Commission "hesitate to consider" the system "discriminatory". They recall that the Convention and the Protocol do not oblige States to establish or to subsidise any education at all; from this they infer that the Belgian State, "in encouraging education in Dutch" and "discouraging education in French" grants "a privilege" to the Flemish-speaking inhabitants without inflicting "hardships" on French-speaking inhabitants. They add that the Contracting States "are generally content to provide or give support to education in their national language" and to throw it open to "all their inhabitants" on equal conditions; the Belgian State has not departed from this rule "of international conduct": "it has simply adapted it, certainly in a summary manner, to the fact that there are several linguistic groups in Belgium". This being so, the five members concerned "do not feel it necessary to dwell on criticisms made by the Applicants of certain matters of detail in the legislation", for example the rule relating to the teaching of the second national language: if "the State's refusal to establish or subsidise schools" does not constitute a discrimination "it necessarily follows that the State enjoys a (...) margin of discretion with regard to the organisation of curricula in official or subsidised education". Four other members also arrive, although for different reasons, at the conclusion that the system of language regulation in education in the unilingual regions is "not incompatible with the Convention". On the other hand, three members of the Commission do not accept this conclusion. Two of them in substance hold the opinion that "the refusal to organise or subsidise French education in localities where there is a sufficient number of French-speaking persons" is also covered by Article 14 (art. 14).

3. Decision of the Court

7. The first question concerns exclusively those provisions of the Acts of 1932 and 1963 which prevented, or prevent, in the regions which are by law deemed unilingual, the establishment or subsidisation by the State of schools not in conformity with the general linguistic requirements.

In the present case, this question principally concerns the State's refusal to establish or subsidise, in the Dutch unilingual region, primary school education (which is compulsory in Belgium) in which French is employed as the language of instruction.

Such a refusal is not incompatible with the requirements of the first sentence of Article 2 of the Protocol (P1-2). In interpreting this provision, the Court has already held that it does not enshrine the right to the establishment or subsidising of schools in which education is provided in a given language. The first sentence of Article 2 (P1-2) contains in itself no linguistic requirement. It guarantees the right of access to educational establishments existing at a given time and the right to obtain, in conformity with the rules in force in each State and in one form or another, the official recognition of studies which have been completed, this last right not being relevant to the point which is being dealt with here. In the unilingual regions, both French-speaking and Dutch-speaking children have access to public or subsidised education, that is to say to education conducted in the language of the region.

The legal provisions in issue, moreover, do not violate Article 8 (art. 8) of the Convention. It is true that one result of the Acts of 1932 and 1963 has been the disappearance in the Dutch unilingual region of the majority of schools providing education in French. Consequently French-speaking children living in this region can now obtain there education only in Dutch, unless their parents have the financial resources to send them to private French-language schools. This clearly has a certain impact upon family life when parents do not have sufficient means to enrol their children in a private school, or prefer that their children should avoid the inconvenience (see the sixth question below) which the application of the law entails as regards education received in a private school which is not in conformity with the linguistic requirements of the laws on education. Such children will complete their studies in Dutch in the locality, unless their parents send them to school in Brussels, Wallonia, or abroad.

Harsh though such consequences may be in individual cases, they do not involve any breach of Article 8 (art. 8). This provision in no way guarantees the right to be educated in the language of one's parents by the public authorities or with their aid. Furthermore, in so far as the legislation leads certain parents to separate themselves from their children, such a separation is not imposed by this legislation: it results from the choice of the parents who place their children in schools situated outside the Dutch unilingual

region with the sole purpose of avoiding their being taught in Dutch, that is to say in one of Belgium's national languages.

It remains to be decided whether the legal provisions criticised violate the first sentence of Article 2 of the Protocol or Article 8 of the Convention, read in conjunction with Article 14 (art. 14+P1-2, art. 14+8).

Here again, the reply must be negative. It is true that the legislature has instituted an educational system which, in the Dutch unilingual region, exclusively encourages teaching in Dutch, in the same way as it establishes the linguistic homogeneity of education in the French unilingual region. These differences in treatment of the two national languages in the two unilingual regions are, however, compatible with Article 2 of the Protocol (P1-2), as the Court has interpreted it, and with Article 8 (art. 8) of the Convention, also when read in conjunction with Article 14 (art. 14+P1-2, art. 14+8).

Article 14 (art. 14) does not prohibit distinctions in treatment which are founded on an objective assessment of essentially different factual circumstances and which, being based on the public interest strike a fair balance between the protection of the interests of the community and respect for the rights and freedoms safeguarded by the Convention.

In examining whether the legal provisions which have been attacked satisfy these criteria, the Court finds that their purpose is to achieve linguistic unity within the two large regions of Belgium in which a large majority of the population speaks only one of the two national languages. This legislation makes scarcely viable schools in which teaching is conducted solely in the national language that is not that of the majority of the inhabitants of the region. In other words, it tends to prevent, in the Dutch-unilingual region, the establishment or maintenance of schools which teach only in French. Such a measure cannot be considered arbitrary. To begin with, it is based on the objective element which the region constitutes. Furthermore it is based on a public interest, namely, to ensure that all schools dependent on the State and existing in a unilingual region conduct their teaching in the language which is essentially that of the region.

This part of the legislation does not violate the rights of the individual. On this point, the Court observes that the provisions which are challenged concern only official or subsidised education. They in no way prevent, in the Dutch-unilingual region, the organisation of independent French-language education, which in any case still exists there to a certain extent. The Court, therefore, does not consider that the measures adopted in this matter by the Belgian legislature are so disproportionate to the requirements of the public interest which is being pursued as to constitute a discrimination contrary to Article 14 of the Convention, read in conjunction with the first sentence of Article 2 of the Protocol (art. 14+P1-2) or with Article 8 (art. 14+8) of the Convention.

B. As to the second question

8. The second question concerns the issue of whether or not in the case of the Applicants, there is a violation of Article 2 of the Protocol (P1-2) and of Articles 8 and 14 (art. 8, art. 14) of the Convention, or of any of those Articles,

> "in so far as the Acts of 1963 result in the complete withdrawal of subsidies from provincial, commune or private schools providing, in the form of non-subsidised classes and in addition to the instruction given in the language prescribed by the linguistic Acts, full or partial instruction in another language".

1. The Facts

9. By a circular of 9th August 1963, the Minister of National Education and Culture drew the attention of "heads of educational establishments" which comprised so-termed "transmutation classes" to the fact that by reason of the Act of 30th July 1963, they must "proceed as from 1st September 1963, to the suppression of all nursery classes (whether the language employed is Dutch or French) and of the first year of primary education (whether the language employed is Dutch or French)", "the other years" having to be "suppressed progressively year by year" and "no new pupils" being permitted to be "enrolled in these classes".

A ministerial circular of 29th August 1963 supplementing the preceding one and intended for "the organising authorities of independent educational establishments", stated the following:

> "(...) In accordance with the declaration made during the debate on the Bill concerning the language regulations in education, subsidies will be withdrawn from schools which maintain, as unsubsidised classes, transmutation classes which must by law be abolished.
>
> If a school continues to provide nursery classes, or first-year primary school classes in a language other than that of the region, subsidies will be suspended in respect of the entire establishment."

These circulars would seem to be based on Section 1 of the Act of 30th July 1963 in conjunction with Section 4. Section 1 states that "official nursery, primary and secondary schools, teacher's training, technical and artistic colleges and special educational establishments and similar private establishments subsidised or recognised by the State, shall be subject to the provisions of this Act". As regards Section 4, it provides, inter alia, that "the medium of education is Dutch in the Dutch-speaking region" and "French in the French-speaking region".

Taken literally, the first paragraph of the circular of 29th August 1963 only applied to transmutation classes which have since disappeared by virtue of Section 22 of the Act of 30th July 1963. The second paragraph was, however, capable of a wider interpretation: it referred also to nursery

classes, although there have never existed transmutation classes at the level of nursery education which is purely optional in Belgium. Furthermore, the circular of 29th August was addressed to all "the organising authorities of independent educational establishments" and no longer, as was that of 9th August, to "the heads of educational establishments which provide so-termed transmutation classes".

Moreover the Commission is of the opinion that "since the continuance of preparatory classes means the loss of subsidies for the whole school", "the existence of a full system of education in a language other than that of the region" must without doubt, and indeed even more so, involve "the same penalty".

The Belgian Government does not contest this assertion. On the contrary, its memorial of 9th May 1967 contains the following passage:

> "Ministerial circulars - in particular those of 9th and 29th August 1963 - drew the attention of headmasters of subsidised private schools to the fact that under the Act of 30th July 1963 the grant of subsidies was subject to their refraining from providing, in addition to education given in the regional language, parallel education given partly or entirely in another language.
>
> However, in primary education a transitional system of gradual abolition of the classes was permitted."

From this the Court concludes that the withdrawal of subsidies is not applicable only to the case of the maintenance of transmutation classes, the closing of which the Act of 30th July 1963 must entail. It likewise observes that the measure in issue displays a permanent character: in the Dutch-speaking region, a "Dutch-language" school which opened classes either completely or partially in French at the nursery, primary or secondary level, would lose its right to subsidies; as regards the "bilingual" schools which, in the same region, formerly maintained such classes, they have been obliged to close them, or to split into two, in order to preserve the right to subsidies.

2. Arguments presented by the Applicants before or through the Commission

10. The Applicants, and especially those of Antwerp, Ghent and Vilvorde, are of the opinion that the withdrawal of subsidies constitutes one of the means utilised by the Belgian State to deprive French-speaking parents in Flanders, in effect, of the possibility of giving their children an education in French on the spot. This measure is in addition to the obstacles established by law (refusal of subsidies and refusal of homologation) and to certain extra-legal pressures (the case of the Public secondary school at Renaix, etc.).

The Applicants observe that according to Section 5, first paragraph, of the Act of 30th July 1963, applicable in the Greater Brussels area, "classes in which the medium of instruction is French and classes in which the

medium of instruction is Dutch may not be placed under a single direction (...)". This provision does not apply to the Dutch-speaking region, but the circulars of 9th and 29th August 1963 lead, according to the better view, to the same results: they require the establishments concerned to close down their French classes, or to split into two. At Antwerp, the Institut St Joseph des Filles de Marie and the Collège Marie-José (amalgamated with the High School) have chosen the second solution. They have erected a wall between the two sections. In the opinion of the Applicants, the construction of such a wall "hurts the feelings of the child who is thus liable to develop a complex" and to be the victim of "a humiliating segregation". The establishments concerned are moreover doomed sooner or later to close down as a result of the cumulative effect of legal measures and other pressures; already several of them have ceased all instruction in French after the entry into force of the 1963 legislation.

Furthermore the Applicants insist on the necessity of distinguishing between the refusal to grant subsidies and their withdrawal, the latter possessing a "punitive character".

3. Arguments presented before the Court by the Belgian Government and by the Commission

11. According to the Belgian Government, the withdrawal of subsidies violates neither Article 2 of the Protocol (P1-2) nor Article 8 (art. 8) of the Convention, which do not oblige the States to provide subsidies and do not safeguard the cultural or linguistic preferences of parents; nor does it infringe Article 14 (art. 14) of the Convention which has "legal effects" only when the Convention "imposes" on States "a certain action" or authorises them to "limit the exercise of the rights and the enjoyment of the freedoms guaranteed" which is not so in the present case (cf. supra). To refrain from providing parallel teaching "entirely or partially in a language other than that of the region", is a simple "condition of the privileges which are represented by subsidies", privileges the withdrawal of which "has nothing to do with the subject matter of the Convention and Protocol".

The other arguments of the Belgian Government are of a subsidiary character; they apply only in the event of the Court's adopting the wide interpretation given to Article 14 (art. 14) by the majority of the Commission. The Belgian Government finds it "difficult to detect any difference between privileges granted to the Dutch-speaking population and disadvantages for the French-speaking population", and consequently also between the refusal to grant subsidies and their withdrawal. In endeavouring to show that this last measure does not constitute a discrimination, it emphasises that "one of the guiding principles of Belgian legislation" consists in subjecting "subsidised private education" to the "same rules" as "official education" and in preventing "evasion of the law". The "Dutch-language schools which created French-language sections" frequently

resorted to "expedients, the smartness of which was sometimes very questionable, to enable the French-language sections to benefit, despite everything, from the grants" allotted "for Dutch-language education". According to the Belgian Government, the heads of these establishments moreover managed "in nearly all cases" to "create a French-language section solely because they were in charge of subsidised and recognised Dutch-language schools". Consequently, the French language sections were generally not "viable except as annexes of Dutch-language schools", and it was possible to have "serious reservations as to the quality of the education" they provided. Certain establishments had stopped all French-language education since 1963-1964. "A few French-language sections, large enough to be independently viable", had however "survived by converting themselves into independent schools". Moreover, the Convention, less generous in this respect than the Belgian Constitution, does not enshrine the right to follow "a linguistic policy not in conformity with that of the national authorities", and the linguistic policy of the Belgian State is pursuing a "legitimate objective" the evaluation of which is not within the competence of the Commission and the Court; this objective is to ensure the formation of Dutch-speaking élites in Flanders by struggling against the "phenomenon of francisation" which once existed there.

12. The Commission confirmed before the Court the opinion expressed by the majority of its members on this question in its Report. In its view the withdrawal of subsidies - like the refusal to grant them - violates neither Article 8 (art. 8) of the Convention nor the second sentence of Article 2 of the Protocol (P1-2), whether these provisions are read "in isolation" or "in conjunction" with Article 14 (art. 14+P1-2, art. 14+8) of the Convention; nor does it infringe the first sentence of Article 2 of the Protocol as long as this is not taken in conjunction with Article 14 (art. 14+P1-2) (cf. supra).

On the other hand the Commission is of the opinion, by seven votes to five, that this measure does not comply with the right to education as it is safeguarded by the first sentence of Article 2 of the Protocol in conjunction with Article 14 (art. 14+P1-2) of the Convention. It considers, in effect, on the basis of its interpretation of Article 14 (art. 14) mentioned above ("scope" and "concept of discrimination": cf. supra), that the withdrawal of subsidies amounts to an "unjustifiable hardship": going far beyond the encouragement, "in either region, of the local language and culture", it tends to "prevent the spread, if not the maintenance even, in one region, of the language and culture of the other region" and to "assimilate minorities into the language of their surroundings". In this connection, the Commission states that the withdrawal of subsidies "is entailed even in the maintenance of nursery classes which do not conform to the legislation in issue"; that it applies to schools which "from the technical and academic points of view" meet "in full the requirements of the law" since they benefited from subsidies before the entry into force of the 1963 Acts; that it in actual fact

concerns only establishments situated in Flanders as there do not seem to be comparable establishments situated in Wallonia; that it "bears hard on French-speaking children, without giving any advantage to Dutch-speaking children" and that it "takes the form of a punitive sanction whose victims, incidentally, are not the educational establishments affected but the French-speaking inhabitants" of the Dutch-speaking region and more precisely, in this case, "all the signatories of the six Applications" referred to the Court.

The Commission further emphasises that the education in French in question "met a need": for it does not believe that private schools would arrange "costly classes without subsidies if the number of pupils were not adequate". As regards "evasions of the law", the Commission believes that the Schools Inspectorate could easily "unmask" them and on discovering them "impose the penalty of withdrawal of the grant". But this is not what is done. "The mere fact that a school provides unsubsidised partial or complete education in French, automatically, by a (...) guillotine effect, entails the withdrawal of all grants".

Five members of the Commission however find no violation on the point in question; the Commission draws the attention of the Court to their dissenting opinions.

4. Decision of the Court

13. The situation with which the second question is concerned is bound up with that dealt with in the first. The legal provisions mentioned in the first render impossible, in the Dutch unilingual region, the establishment or subsidising by the State of schools which conduct education in French. The legal and administrative measures to which the second question relates, merely supplement them: they tend to prevent the operating of "mixed language" schools which, in a unilingual region - in this case, the Dutch unilingual region - provide, in the form of non-subsidised classes and in addition to instruction given in the language of the region, full or partial instruction in another language. What is in issue, therefore, is a whole series of provisions with a common aim, namely, the protection of the linguistic homogeneity of the region.

The Court's reply to the second question is the same as that already given to the first.

Neither Article 2 of the Protocol (P1-2), nor Article 8 (art. 8) of the Convention are violated by the provisions in dispute.

As the first sentence of Article 2 of the Protocol (P1-2) taken by itself leaves intact the freedom of States to subsidise private schools or to refrain from so doing, the withdrawal of subsidies from schools which do not satisfy the requirements to which the State subjects the grant of such subsidies - in this case the condition that teaching should be conducted exclusively in accordance with the linguistic legislation - does not come within the scope of this Article (P1-2).

There is likewise no breach of Article 8 (art. 8) of the Convention for the same reasons as were explained above in the reply to the first question.

Nor does the Court find any violation of Article 2 of the Protocol and of Article 8 of the Convention, read in conjunction with Article 14 (art. 14+P1-2, art. 14+8).

The Court has already stated, with respect to the first question, that measures which tend to ensure that, in the unilingual regions, the teaching language of official or subsidised schools should be exclusively that of the region, are not arbitrary and therefore not discriminatory. These measures do not prevent French-speaking parents who wish to provide a French education for their children from doing so, either in non-subsidised private schools, or in schools in the French unilingual region or in the Greater Brussels District.

The legislation to which the first question has reference does not permit the establishment or functioning, in the Dutch unilingual region, of official or subsidised schools providing education in French. The legislation with which the second question is concerned goes further; by the total withdrawal of subsidies, it makes it impossible, in the same region, for teaching in French to be conducted as a secondary activity by a subsidised Dutch-language school.

The Commission has emphasised that such a withdrawal "bears hard on the French-speaking children" in Flanders, particularly since the majority of the schools in Flanders which provided education in French were "mixed-language" schools.

However, while recognising that this is a harsh measure, the Court cannot share the Commission's opinion that such a hardship is forbidden by a joint reading of the first sentence of Article 2 of the Protocol (P1-2) and Article 14 (art. 14) of the Convention. This opinion could be accepted only if the "hardship" were to amount to a distinction in treatment of an arbitrary and therefore discriminatory nature. The Court has, however, found that, whatever their severity, the legal or administrative provisions touched on by the first question are based on objective criteria. The same is true of the measure here in question. Its purpose is to avoid the possibility of education which the State does not wish to subsidise - for reasons which are completely compatible with Article 2 of the Protocol (P1-2) and Articles 8 and 14 (art. 8, art. 14) of the Convention - benefiting, in some way or another, from subsidies destined for education which is in conformity with the linguistic legislation. This purpose is plausible in itself and it is not for the Court to determine whether it is possible to realise it in another way.

For their part, the effects of this measure are solely of such a kind as to prevent subsidised and unsubsidised education being conducted in the same school. They in no way affect the freedom to organise, independently of subsidised education, private French-language education.

Hence the legal and administrative measures in question create no impediment to the exercise of the individual rights enshrined in the Convention with the result that the necessary balance between the collective interest of society and the individual rights guaranteed is respected. Consequently, they are not incompatible with the provisions of Article 2 of the Protocol and of Article 8 of the Convention, read in conjunction with Article 14 (art. 14+P1-2, art. 14+8).

C. As to the third question

14. The third question concerns the issue of whether or not in the case of the Applicants there is a violation of Article 2 of the Protocol (P1-2) and of Articles 8 and 14 (art. 8, art. 14) of the Convention or of any of those Articles, "with regard to the special status conferred by Section 7, third paragraph, of the Act of 2nd August 1963, on six communes, of which Kraainem is one, on the periphery of Brussels", this being without prejudice to the conditions of residence referred to in the fifth question.

1. The Facts

15. Situated some kilometres to the east of Brussels, the commune of Kraainem belonged, under the system created by the 1932 Acts, to the unilingual Flemish region. Following "a considerable migration of French-speaking persons from Brussels" to the "more airy periphery" and as a result of a "spontaneous phenomenon (...) of francisation", Kraainem gradually lost its character of a purely Flemish locality. The last linguistic census which took place in 1947, showed that 47 % of the population were French-speaking. According to the signatories of Application No. 1677/62, an "indirect linguistic census" was taken in Kraainem on 31 December 1961 despite the Act of 24th July 1961: the commune administration, having distributed bilingual forms to the population, ascertained that 61.18 % of the population was French-speaking, and today it is 65 %. On the other hand, the Belgian Government is of the opinion that these "so called statistics", "compiled in circumstances far removed from objective scientific research", should be treated "with the greatest reserve".

Be this as it may, Kraainem at present forms part neither of "the Dutch-language region", nor "the French-language region", nor yet again of "the Greater Brussels area", the respective composition of which is fixed by Sections 3, 4 and 6 of the Act of 2nd August 1963. Under Section 7 (1) of the same Act, it forms, together with five other communes in the immediate neighbourhood of the capital of the Kingdom, namely, Drogenbos, Linkebeek, Rhode-St. Genèse, Wemmel and Wezembeek-Oppem, "a separate administrative district" with its own "special status". This status is essentially defined in paragraphs 2 and 3 of Section 7. Paragraph 2 in substance provides that the six communes concerned shall enjoy a bilingual

system "in administrative matters", at least in relations between the local services and the public. As regards paragraph 3, which is applicable to "the question of schools", it is worded as follows:

"A. Teaching shall be in Dutch.

The second language may be taught at the primary level to the extent of four hours a week in the second form and eight hours a week in the third and fourth forms.

B. Nursery and primary schooling may be given to children in French if that is their maternal or usual language and if the head of the family resides in one of these communes.

Such schooling may be provided only on the request of 16 heads of families residing within the commune.

The commune to which such an application is made must organise such schooling.

The teaching of the second national language shall be compulsory in primary schools to the extent of four hours a week in the second form and eight hours a week in the third and fourth forms.

C. The teaching of the second language may include exercises of revising the other subjects of the programme".

For the six communes in question, the linguistic control set up by Chapter V of the Act of 30th July 1963 is supplemented by that exercised by the Government commissioner, Vice-Governor of the province of Brabant (Section 7 (1) and (5) of the Act of 2nd August 1963).

2. Arguments presented by the Applicants before or through the Commission

16. The Applicants from Kraainem (Application No 1677/62) consider that this legislation violates Article 2 of the Protocol (P1-2) and Articles 8 and 14 (art. 8, art. 14) of the Convention. In their view, "the Brussels urban area" constitutes "a single indivisible entity". The Act of 30th July 1963 (Sections 4 and 5) and the Act of 2nd August 1963 (Sections 3, 6 and 7), however, provide "at least three distinct" systems: that for Greater Brussels, that for the six communes mentioned above, including Kraainem, and that of the other "surrounding" communes, including Alsemberg and Beersel, which still belong to the Dutch language region. Such a system reflects a wish "to throttle the facts": anxious to ensure the "Flemish reconquest" of the "outlying communes where the Brussels overspill has gone", the public authorities have confined the capital "within iron bounds", all the more rigid as the Act of 24th July 1961 has suppressed the linguistic part of the population census.

"Although relatively better" than that of Alsemberg and Beersel, the status of Kraainem represents the "height of absurdity" for it aims at the

"protection" of a French-speaking majority, not a minority. This protection, moreover, is still highly insufficient; it merely provides "facilities of little value", wrongly described as "large concessions". First, Section 7 (3) (B) of the Act of 2nd August 1963 concerns only nursery and primary education; the secondary and technical schools at Wemmel, Wezembeek-Oppem and Rhode-St. Genèse follow the Flemish unilingual regime, as would those which would be opened at Kraainem, Drogenbos and Linkebeek. Even in the sphere of nursery and primary education, Section 7 (3) (B) is not satisfactory: it adopts the criterion of the maternal or usual language, which does not fully ensure freedom of choice for the parents and the severity of which is increased by a strict linguistic control. Moreover, local authorities often "drag their feet" in the opening of French classes in the six communes. Further still, Article 7 (3) (B) requires, for those classes, the teaching of Dutch for four hours a week in the second form at the primary level and eight hours in the third and fourth forms; "teaching of the second language" thus "takes up more time" than that of the first language, "since only six hours of French" are "foreseen in Belgian primary school curricula". This situation is the more "extraordinary" as teaching of French in the Dutch classes at Kraainem is optional (Section 7 (3) (A) of the Act of 2nd August 1963). In short, the Belgian Parliament is seeking to make the children "comply" with "the demands of the ground". Compelled to respect "certain acquired rights which are strikingly obvious and of great importance", it tolerates them only "provisionally" in order to "do away with them as soon as possible". In the final analysis, the French classes in Kraainem are nothing but "instruments of depersonalisation", "intensive transmutation classes". Accordingly the Applicants refuse to send their children to them; to benefit from "a decent education in French", the latter make "long and expensive daily journeys to one of the 19 communes of Brussels", at the cost of "disruption in their private and family life" and in that of their parents.

3. Arguments presented before the Court by the Belgian Government and by the Commission

17. Before the Commission, the Belgian Government maintained that the linguistic status in education of Kraainem infringes none of the three Articles (P1-2, art. 8, art. 14) invoked. While its principal argument was that the Articles were totally inapplicable (cf. supra), it presented several subsidiary arguments. It observed in substance, that the linguistic control does not operate with the arbitrary strictness alleged by the Applicants, that the French classes at Kraainem in no way constitute instruments of depersonalisation and that the Belgian Parliament is certainly not seeking the "Flemish reconquest" of the environs of Brussels.

Before the Court, the Belgian Government spent little time on this question; it referred expressly to the opinion of the majority of the Commission.

18. The Commission, for its part, considers that the "special status" defined in Section 7 (3) of the Act of 2nd August 1963 does not conflict with the requirements of the Convention or the Protocol. It confirmed before the Court the opinion expressed by it on this question in its Report.

Being of the opinion that the Applications "should be declared ill-founded" in so far as they are based on Article 2 of the Protocol (P1-2) (cf. supra) the Commission does not consider it to be necessary to examine the "particular circumstances which distinguish the Applications from one another", or the differences "between the 1932 legislation and that of 1963". It points out, nevertheless, that by virtue of the Act of 2nd August 1963, "the Kraainem Applicants may obtain education in French for their children, at least at the primary level".

As far as concerns Article 8 (art. 8) of the Convention, the Applicants have no complaint to make of any "State interference in private and family life" since secondary education does not have to be taken into account in this respect (cf. supra) and since Kraainem has, at this very moment, primary school classes in French. They give "no details" on the question of the "reticence" for which they reproach the local authorities and, above all, do not assert that "their children cannot receive a French education on the spot". Moreover, "in principle" they have "nothing to fear" from linguistic control if they are all truly French-speaking; in the event of "one of them" considering himself "the victim of a wrong decision by the language inspectorate, domestic remedies are open to him". The complaint based on the intensive teaching of Dutch in the French schools at Kraainem is also unjustified: the Commission finds it "natural that a bilingual State such as Belgium should take steps, especially in bilingual areas, to ensure that its inhabitants know the country's two languages"; "at the most one might", according to the Commission, "find it surprising that, in the Dutch schools" in Kraainem, "the teaching of French is optional". The obligation to learn "the second language of the country" is not an "attack" on the "pupils personality and private life": "general education is given in French" and parents in most cases have "the means to ensure that their children acquire a good knowledge of their maternal language". "In any event", the Applicants have not "informed the Commission of any case in which there is no such possibility".

The Commission finally examines the question as to whether, on the point under consideration, there is a violation of Article 14 of the Convention, in conjunction with Article 2 of the Protocol (art. 14+P1-2) or Article 8 (art. 14+8) of the Convention. Certain rules relating to the status in issue seem to it to reflect "the Belgian State's desire to ensure the maintenance of the Dutch-language", indeed to assimilate "minorities,

against their wish, into the sphere of the regional language". Eleven members of the Commission, however, believe that this does not result in any discrimination incompatible with Article 14 (art. 14). Seven of them consider it to be "quite proper that the Act should enforce the teaching of Dutch in communes in which the Dutch language is spoken by a large proportion of the inhabitants, sometimes a majority". As regards the absence, at Kraainem, of "official or subsidised French education at secondary level", this does not seem to these members of the Commission to be incompatible with Article 14 (art. 14): "if it is agreed that the State's refusal to establish or subsidise primary education in French" is not of a discriminatory nature, the same conclusion applies, a fortiori, "to secondary education". It is true that the State draws a distinction, in this respect, in a way detrimental to French-speaking pupils; this, however, represents "a favour granted by the law to Flemish-speaking inhabitants" and "not a hardship interfering with enjoyment by the French-speaking population of the rights guaranteed by the Convention". "According to the information received by the Commission", moreover, there is Dutch secondary education only in three of the communes referred to in Section 7 (1) of the Act of 2nd August 1963, namely, Wemmel, Wezembeek-Oppem and Rhode-St. Genèse. Dutch-speaking parents living at Kraainem must also therefore send their children "to schools at some distance" if they wish them to receive secondary education; this situation does not in any way depend "on the language question". Four other members of the Commission likewise conclude, on different grounds, that the system in the six communes on the outskirts of Brussels is not incompatible with the Convention. On the other hand, one member does not accept this conclusion. He is substantially of the opinion that the Kraainem Applicants remain "although to a much lesser extent than before 1963", "victims of discrimination incompatible with Article 14 (art. 14) of the Convention". The Commission draws the attention of the Court to these different individual opinions.

4. Decision of the Court

19. The residence conditions to which the fifth question relates being reserved until later, the special status conferred by Section 7 (3) of the Act of 2nd August 1963 on six communes on the periphery of Brussels, including Kraainem, does not violate, in the case of the signatories of Application No. 1677/62, any of the three Articles (P1-2, art. 8, art. 14) invoked by them before the Commission.

As is the case with the legal and administrative provisions with which the first and second questions are concerned, the status of the six communes involves neither a denial of the right to education, guaranteed by the first sentence of Article 2 of the Protocol (P1-2), nor any derogation from the

right to respect for private and family life enshrined in Article 8 (art. 8) of the Convention.

On this point, the Court first emphasises that the French-language nursery and primary schools existing in the six communes are open to the children of the signatories of Application No. 1677/62. The right to education of these children, within the meaning of the first sentence of Article 2 of the Protocol (P1-2), is thus respected.

Moreover, no interference with the exercise of the right to respect for private and family life protected by Article 8 (art. 8) of the Convention can be found in this case. In alleging before the Commission that this provision had been violated, the Applicants have misunderstood its scope. To require a child to study in depth that national language which is not his own, cannot be characterised as an act of "depersonalisation". As regards the decision of certain Applicants to send their children to a French-language school in Greater Brussels, rather than to a school governed by Section 7 (3) (B) of the Act of 2nd August 1963, this is the result of their own choice and not of an interference by the authorities in their private and family life.

It remains to be decided whether the measures in issue violate the first sentence of Article 2 of the Protocol or Article 8 of the Convention, read in conjunction with Article 14 (art. 14+P1-2, art. 14+8).

Here again the reply must be negative.

The six communes in question belong to an area which is by tradition Dutch-speaking. In consideration of the large number of French-speaking persons who are resident there, the legislature has established a system which departs from the principle of territoriality. It makes the organisation of official or subsidised education in French subject to the deposit of a request by 16 heads of family living in the commune in question; moreover, this education is compulsorily accompanied by a study in depth of Dutch. In so doing, the Act does not go outside limits drawn according to objective criteria and is based on a public interest. Furthermore, the establishment and maintenance of education conducted in French is possible in the communes concerned. Finally, the fact that this education is tied to a study in depth of Dutch, whereas the study of French remains optional in Dutch schools in the same communes, does not constitute a discrimination as the latter belong to a region which is, by tradition, Dutch-speaking.

As regards the argument based on the absence, at Kraainem, of official or subsidised secondary education in French, the Court recalls that Article 2 of the Protocol (P1-2) does not require the Contracting States to establish educational establishments: the question is thus one which is left to the evaluation of the competent national authorities. The Court also notes once again that in Belgium compulsory schooling extends essentially to primary education. It points out, incidentally, that Kraainem does not even possess, at present, education in Dutch at the secondary level.

D. As to the fourth question

20. The fourth question concerns the issue of whether or not in the case of the Applicants, there is a violation of Article 2 of the Protocol (P1-2) and Articles 8 and 14 (art. 8, art. 14) of the Convention, or of any of those Articles,

> "with regard to the conditions on which children whose parents reside outside the Greater Brussels district may be enrolled in the schools of that district (Section 17 of the Act of 30th July 1963)".

1. The Facts

21. The second, third, fourth and fifth paragraphs of Section 17 of the Act of 30th July 1963 provide that:

> "In all cases in which the child's language of instruction is determined by his maternal or usual language, the head of the school may register the child for a particular system only on production of one of the following:
>
> (a) a certificate issued by the head of the school which the pupil has just left, certifying that his previous schooling has been through that language;
>
> (b) a language declaration by the head of the child's family, and approved by the language inspectorate in all cases where the inspectorate has no doubts as to the correctness of such declaration;
>
> (c) a decision by the Commission or Board referred to in Section 18.
>
> Where a child is registered at a nursery school for the first time, the head of the school may, however, admit him on production of a language declaration. The latter must within one month be forwarded to the language inspectorate for verification.
>
> In the case of pupils who enrol in a school in the Greater Brussels district and whose parents reside outside that district, the language of instruction shall, in the absence of any declaration to the contrary made by the head of the family and approved by the language inspectorate, be the language of the region in which the parents are resident.
>
> The King shall lay down standard forms for the certificate and declaration which shall comprise any information likely to facilitate the verification of their correctness."

A Royal Decree was issued on 30 November 1966 which implemented this last paragraph; two other Royal Decrees of the same date stipulated the status and rules governing the functioning of the language inspectorate as provided for by Section 18 of the Act of 30th July 1963.

2. Arguments presented by the Applicants before or through the Commission

22. According to the Applicants, these provisions are incompatible with Article 2 of the Protocol (P1-2) and Articles 8 and 14 (art. 8, art. 14) of the

Convention. In the Greater Brussels district, "the language of instruction is" in principle "Dutch or French, according to the maternal or usual language of the child" (Section 5 of the Act of 30th July 1963). However, the system of the maternal or usual language does not secure to parents a complete freedom of choice: the declaration of the head of the family must be "a statement of fact" not "the expression of a wish", and the language inspectorate verifies its accuracy (Sections 17 and 18 of the Act of 30th July 1963). This control, which the Applicants consider to be "of an odious nature" in itself, in addition opens the door to "arbitrary" decisions, more especially as the maternal language may differ from the usual language and as there exist many bilingual homes. As to the appeals available under the Acts of 30th July 1963 (Section 18) and 23rd December 1946 (Conseil d'État), they do not have a suspensive effect and, moreover, cannot correct the fundamental defect in the system criticised.

The complaints of the Applicants, however, are principally directed against the fourth paragraph of Section 17 of the Act of 30th July 1963, which concerns the particular situation of parents wishing to send their children to school in the Greater Brussels district but whose homes are outside the district. This paragraph introduces a further obstacle to the exercise of the Applicants' freedom of choice: if they send their children to be educated in the capital, the language of instruction will normally be that of the region where they live, in this case Dutch. Of course the head of the family may make a declaration to the contrary but he will have to obtain, under the conditions described above, the agreement of the language inspectorate. To rebut the "legal presumption" embodied in the fourth paragraph of Section 17, he must provide a "counter proof" "a distinctly discriminatory procedure" in the view of the Applicants. "In doubtful or complex cases", which are no unusual thing in Belgium, the presumption will prevail.

For children leaving a nursery school situated in the unilingual Flemish area, sending them to Brussels constitutes an even more precarious solution by reason of the second and third paragraphs.

In short, Section 17 tends to deprive the head of the family "even at the price of dislocating his home", "of the elementary right to have his flesh and blood resemble him intellectually".

The signatories of Application No. 2126/64 nevertheless observe that "1253 children from Vilvorde attend French schools in Brussels or Wallonia". For the transport of children from the age of three up to nine or 10 years they have hired coaches; furthermore they have established a rota system to supervise the children's mounting at the various departure points and dismounting at the arrival points. Other Applicants seem to have adopted the same solution.

3. Arguments presented before the Court by the Belgian Government and by the Commission

23. Before the Commission, the Belgian Government maintained that Section 17 of the Act of 30th July 1963, and in particular its fourth paragraph, violates neither Article 2 of the Protocol (P1-2) nor Articles 8 and 14 (art. 8, art. 14) of the Convention. While its principal argument was that the Articles (P1-2, art. 8, art. 14) were totally inapplicable (cf. supra), it presented a series of subsidiary arguments. It observed, in the first place, that the criterion of the maternal or usual language is much more simple, flexible and liberal than the Applicants contend. A child whose language is French runs no risk of being denied admission to the French classes of Greater Brussels, even if he has begun his schooling in Flanders and in Dutch. In this respect, the Act of 30th July 1963 differs from that of 14th July 1932 on one point only: it creates "two legal presumptions" based respectively on "the language in which the child was previously taught" (second paragraph of Section 17) and on the language of the region where his parents live (fourth paragraph). These presumptions may, however, be "rebutted by a declaration by the father of a family". As regards the language inspectorate, it does not function with the strictness alleged by the Applicants; its objectivity is further guaranteed through the appeals provided for by the legislation in force (Section 18 of the Act of 30th July 1963, Royal Decree of 30th November 1966, on the functioning of the language inspectorate and Act of 23rd December 1946 creating a Conseil d'État in Belgium). Consequently abuses ascribable to "punctilious officials" occur only rarely. Moreover, the Applicants are not entitled to complain thereof to the Commission until they have "sought a remedy" before the competent "national tribunal".

Before the Court, the Belgian Government referred expressly to the opinion of the Commission on the point in question. Moreover it emphasised that children whose mother tongue or usual language is, for example, German, rather than French or Dutch, "can enrol in a French-language school in the Greater Brussels district as well as in a Dutch-language school". It added that "schools in the Greater Brussels district that provide some special education" given in one language only may admit pupils whose mother tongue is not the language of instruction, even if their parents reside outside the district. It is sufficient, in such a case, that it is impossible for them to receive "the education in question in their own linguistic region" (Ministerial circular of 10th October 1963).

24. The Commission, confirming before the Court the unanimous opinion formulated by it in this matter in its Report, considers that Section 17 of the Act of 30th July 1963 does not infringe any of the three Articles (P1-2, art. 8, art. 14) invoked by the Applicants. As far as concerns Article 2 of the Protocol (P1-2) and Article 8 (art. 8) of the Convention, viewed in isolation, its opinion is based on considerations summarised above. Neither

does the Commission think that Section 17 of the Act of 30th July 1963 involves, in this case, a discrimination contrary to Article 14 of the Convention read in conjunction with Article 2 of the Protocol (art. 14+P1-2) or Article 8 (art. 14+8) of the Convention. It is true that it observes that the Dutch-speaking parents in Wallonia do not seem to send their children to the Greater Brussels district as frequently as French-speaking parents in Flanders; it sees here one of the proofs of the relative nature of the "parallelism" established by law between the two large linguistic areas. The fact that Dutch-speaking children "are not admitted to French schools in Brussels", and the existence of linguistic control, seem to the Commission to reflect "the Belgian State's desire to ensure the maintenance of the Dutch language". The Commission observes, however, that the Applicants including those of Vilvorde nowhere assert "that any of their children have not been admitted to the French schools in Brussels"; it concludes from this that "they cannot claim to be victims of a discriminatory measure".

In its memorial of 16th December 1965, the Commission draws "the Court's attention to a special aspect of the legislation complained of by the Applicants": "even where the legislation in force provides for a dual language system for official or recognised education", for example in the Greater Brussels district, "it does not give parents the choice between French and Dutch as their children's language of instruction" since it "lays down the system of "the material or usual language" and makes the declaration of the head of the family subject to verification by the language inspectorate". The Commission wonders whether the result is a simple "legitimate distinction" or in actual fact a "discrimination" incompatible with Article 14 (art. 14). Nevertheless the question does not seem to it "to arise in specific terms in the cases before the Court, since the Applicants claim to be French-speaking and want their children to be instructed in French".

4. Decision of the Court

25. The conditions which regulate the enrolment in the schools of the Greater Brussels District of children whose parents are resident outside this district, are laid down in Section 17 of the Act of 30th July 1963. The application of this provision does not, in the case of the Applicants, violate any of the three Articles of the Convention and Protocol (art. 8, art. 14, P1-2) invoked by them before the Commission.

The Court recalls that the first sentence of Article 2 of the Protocol (P1-2) does not, by itself, imply any requirement of a linguistic nature and that Article 8 (art. 8) of the Convention does not lay down any personal right of parents in relation to the education of their children. It further finds that the legal provision in issue has not caused unjustifiable disturbance to the private and family life of the Applicants.

Nor does the Court find, on the point under consideration, any discrimination contrary to Article 14 of the Convention, read in conjunction with the first sentence of Article 2 of the Protocol (art. 14+P1-2) or with Article 8 (art. 14+8) of the Convention; such discrimination has not, in any case, been shown by the Applicants.

In its memorial of 16th December 1965, the Commission drew the attention of the Court to the fact that where there exists a dual system of official or subsidised education, as for instance at Brussels, parents are not free to choose between French and Dutch as the language of education for their children. In the present case, this question assumes a theoretical character since the Applicants declare themselves to be French-speaking and wish their children to be educated in French; indeed the Commission has not failed to point out this fact. The Court cannot settle a problem which does not arise in the present case.

E. As to the fifth question

26. The fifth question concerns the issue as to whether or not, in the case of the Applicants, there is a violation of Article 2 of the Protocol (P1-2) or of Articles 8 and 14 (art. 8, art. 14) of the Convention, or of any of those Articles,

> "in so far as Section 7, last paragraph, of the Act of 30th July 1963 and Section 7, third paragraph, of the Act of 2nd August 1963 prevent certain children, solely on the basis of their parents' place of residence, from attending French-language schools at Louvain and in the six communes" on the outskirts of Brussels which enjoy a "special status", including Kraainem."

1. The Facts

27. Under Section 7, second paragraph in fine, of the Act of 30th July 1963, a motivated Royal Decree, after deliberation in the Council of Ministers and being published in full in the "Official Gazette", may provide for exceptions to the provisions of Section 4 - which concerns the unilingual regions - in respect of:

> "Special teaching classes, technical education classes which are at present in existence, and secondary school classes which are at present in existence, serving as teacher-training for a university and which are situated in the same urban area as such university. Such classes shall be open only to children whose maternal or usual language is not the language taught in the region in which the school is situated, and where the head of the family resides outside such region or is covered by the special regime provided for in Section 40 of the Act on the use of language in administrative matters; they are also open to children of foreign nationality, where the head of the family belongs to an organisation set up under international law, an embassy, legation or consulate."

Section 40 of the Act of 2nd August 1963 on the use of languages in administrative matters, to which this provision refers, concerns "the employees, students and teaching staff" of the "bilingual University situated in a commune not subject to a special regime", "as well as members of their families living with them".

In pursuance of Section 7, second paragraph in fine, of the Act of 30th July 1963, a Royal Decree of 8th August 1963, published in the Official Gazette of 22nd August 1963, introduced "temporary exceptions to the provisions of Section 4" of the same Act. The main provisions of the Royal Decree were as follows:

"BAUDOUIN, King of the Belgians,

(...)

Whereas the short space of time between the publication of this Act and its implementation makes it impossible to carry out a thorough study of the situation of the various existing classes which might avail themselves of a derogation from the provisions of Section 4

(...);

Whereas the position during the school year 1963-1964 of the schools concerned should be decided as soon as possible;

(...),

We have decreed and do decree:

Section 1, Official schools and independent schools either subsidised or recognised by the State which, during the school year 1962-1963, provided instruction in a language other than that of the region in which the school is situated, may continue such instruction during the school year 1963-1964:

(a) (...);

(b) in the technical or special education classes;

(c) in the French secondary education classes of the Institut du Sacré-Coeur at Heverlee.

Such teaching shall be open only to those children who were already registered at the school during the academic year 1962-1963, as well as to children to whom Section 7 of the Act of 30th July 1963 applies.

Section 2 (...)."

The Belgian Government, at the request of the Court, produced on 30th November 1967 the text of a Royal Decree of 30th November 1966 "taken in pursuance of Section 7, paragraph 2, 2° of the Act of 30th July 1963".

Published in the Official Gazette on 3rd December 1966, this Royal Decree apparently displays a permanent character lacking in that of 8th August 1963. The principal provisions are as follows:

> "BAUDOUIN, King of the Belgians,
>
> (...)
>
> Having regard to the existence of organised education in the special teaching classes, and to that on 30th July 1963, of organised education in technical education classes, in secondary school classes serving as teacher training for the Catholic University of Louvain, and which are situated in the same urban area as this University;
>
> (...);
>
> Considering the urgency;
>
> (...);
>
> We have decreed and do decree:
>
> Section 1. Education organised in French in special teaching classes as well as that existing on 30th July 1963 in technical education classes and in secondary school classes serving as teacher training for the Catholic University of Louvain, and which are situated in the same urban area as this University, is available to children referred to in Section 7 paragraph 2, 2° of the Act of 30th July 1963, as well as to those who were already enrolled in such classes for the school year 1962-1963.
>
> Section 2. The present Decree enters into force on 1st September 1966.
>
> Section 3. (...)"

The city of Louvain and the adjacent commune of Heverlee are both situated in the "Dutch-language region"; they are a few kilometres from the linguistic frontier. The Catholic University has been situated at Louvain for centuries; it includes both a Flemish and a French section. L'Institut du Sacré-Coeur at Heverlee is also an independent establishment; it formerly had French secondary classes open only to girls. As those classes served, inter alia, as "student teachers" classes of the University, the Royal Decree of 8th August 1963 authorised their retention. As regards the Royal Decree of 30th November 1966, it does not seem to have changed their position to their detriment although it no longer refers expressly to them. The Applicants and the Belgian Government have not drawn attention to the presence of French language classes - official, subsidised or recognised - in the Louvain urban area, other than those of L'Institut du Sacré-Coeur at Heverlee. It appears, however, from the report of the Commission and from the Royal Decrees of 8th August 1963 and 30th November 1966 that special, technical and secondary French-language classes, attached to the University of Louvain, have likewise been able to survive.

Whether situated at Louvain or at Heverlee, the classes in question enjoy financial support from the State. Admission is granted, however, to four types of children only: children who attended the classes during the school year 1962-1963; children of employees, students and teaching staff of the University as well as members of their family living with them; children of foreign nationality, when the head of the family belongs to an international law organisation, embassy, legation or consulate; and finally, children of French-speaking Belgians if the head of the family lives outside the Dutch-speaking region.

28. Article 7 para. 3 (b) of the Act of 2nd August 1963 has already been cited in extenso in connection with the third question (para. 15 supra). It will be enough to recall here that at Drogenbos, Kraainem, Linkebeek, Rhode-St. Genèse, Wemmel and Wezembeek-Oppem, nursery and primary school teaching must be conducted in French for children when it is their maternal or usual language, "if the head of the family resides in one of the communes" and if "16 heads of family residing within the commune" concerned request it.

The Commission considers this provision to be "somewhat ambiguous". It gives the following interpretation which the Belgian Government has not disputed:

> "It (...) appears, that heads of family who live in other communes of the same category may not join together to request the opening of a French-school in one of these communes; the request may come only from sixteen heads of family all living in the same commune. On the other hand, it appears certain that if there is a French-speaking school in one of the communes in question, French-speaking children in other communes of the same category (...) may also enter it".

Whatever the case may be, a child cannot attend the French classes at Drogenbos, Kraainem, Linkebeek, Rhode-St. Genèse, Wemmel or Wezembeek-Oppem if the head of the family resides elsewhere than in one of the six communes enjoying "a special status", for example in the unilingual Flemish region.

2. *Arguments presented by the Applicants before or through the Commission*

29. According to the Applicants, the legislation in issue is, on the two points under consideration, incompatible with Article 2 of the Protocol (P1-2) and Articles 8 and 14 (art. 8, art. 14) of the Convention.

As far as concerns the French classes at Louvain and Heverlee, the signatories of Application No. 1994/63 (Louvain and environs), first assert that Louvain is an asset "belonging to Belgium as a whole" and consequently "should enjoy a national rather than a Flemish status". However the French section of the University was "very nearly" abolished in 1963 in the name of "the principle of the absolute integrity of Flemish territory"; this idea is said to have been given up only for practical and

financial reasons and action aiming at the "expulsion" of the French section to Wallonia is now being pursued. The Applicants furthermore emphasise that at Louvain and Heverlee there formerly existed a series of French classes including transmutation classes. The entry into force of the Act of 30th July 1963 brought about the disappearance of the majority of these classes. As for those which remain, they are of a precarious and revocable nature since Section 7 paragraph 2 of the Act of 30th July 1963 is of a permissive not mandatory character ("exceptions may be made").

The signatories of Application No. 1994/63 reproach the Belgian legislature for preventing them from enrolling their children in the classes which remained. They declare that they are almost all resident at Louvain, Heverlee or in other communes in the unilingual Flemish region, that they are not employees, students or professors at the Catholic University and that they are of Belgian nationality. They admit therefore that they do not comply with the various requirements laid down in Section 7 in fine of the Act of 30th July 1963. The language inspectorate carefully verifies the fulfilment of these conditions; one of the Applicants had personal experience of this. Consequently, Section 7 in fine of the Act of 30th July 1963 runs counter to the "wishes of the Applicants" from Louvain, "to give their children a French education". It brings about a situation "all the more open to criticism since the Applicants" use "the French language" exclusively or principally, and since "they live in a region with a large French-speaking minority where a French school still exists to which they are denied access". This last circumstance shows that it matters little, in this case, whether or not Article 2 of the Protocol (P1-2) creates a positive obligation. In order to give their children the opportunity of pursuing their education in French, the Applicants are obliged either to engage in "scholastic emigration" or to leave Louvain; the result is an infraction of the rights guaranteed by Article 8 (art. 8) of the Convention. By opening French classes at Louvain and Heverlee to certain foreign children and to those of the employees, students and professors of the University, the legislature has established "schools for castes and privileged persons". In general, Section 7 in fine of the Act of 30th July 1963 introduces a series of discriminations based not only on residence but also on sex (Institut du Sacré-Coeur at Heverlee), language, belonging to a national or linguistic minority, nationality and profession. The Antwerp and Ghent Applicants (Applications Nos. 1691/62 and 1769/63) likewise complain that they cannot send their children to the French classes in the Louvain urban area.

The residence condition to which Section 7 § 3-B of the Act of 2nd August 1963 subordinates admission to French classes in the six communes enjoying "a special status" is likewise incompatible with the Convention and the Protocol. It is true that it in no way prejudices the signatories of Application No. 1677/62 since they live at Kraainem; the Commission and the Belgian Government have not failed to make this point. In fact these

Applicants above all attack other aspects of the system applicable to Drogenbos, Kraainem, Linkebeek, Rhode-St. Genèse, Wemmel and Wezembeek-Oppem (cf. supra); nevertheless, they consider as abnormal a "strictly territorialist" provision which "prevents children living on the other side of the street, that happens to lie within the administrative area of another commune", from attending the schools in question. The Applicants from Alsemberg, Beersel, Antwerp, Ghent, Louvain and Vilvorde are more directly affected. Thus the son of one of the counsel representing the Applicants from Antwerp, Ghent and Vilvorde (Applications Nos. 1691/62, 1769/63 and 2126/64) lives at Tervueren, which is situated in the Dutch-language area but which is contiguous with Wezembeek-Oppem; the entry into force of the Act of 2nd August 1963 obliged him to withdraw his children from a French school at Wezembeek-Oppem, situated 150 metres from his home, and to send them every day to Brussels, about a dozen kilometres away. The Applicants consider that in this respect they are victims of violations of Article 2 of the Protocol (P1-2) and Articles 8 and 14 (art. 8, art. 14) of the Convention, and in particular of a discrimination based on residence.

In the case of Louvain as in that of the six communes on the outskirts of Brussels, the discriminations denounced by the Applicants are not based on "financial or administrative" reasons; they reflect a will to enshrine the "rights of the ground" to the detriment of individual freedoms and to "liquidate the French-speaking minorities" by compelling them to "become flemicised" or to "move away".

3. Arguments presented before the Court by the Belgian Government and by the Commission

30. The Belgian Government maintains that the legislation in dispute in no way conflicts, on the two points under consideration, with the requirements of the three Articles (P1-2, art. 8, art. 14) invoked by the Applicants. While its principal argument was that the Articles were totally inapplicable (cf. supra), it presents several subsidiary arguments. It emphasises, in substance, that Section 7 in fine of the Act of 30th July 1963 and Section 7 § 3-B of the Act of 2nd August 1963 depart from the territorial principle only for very special reasons: namely to respond to the "needs of the bilingual University of Louvain in the matter of teacher's training" and to provide in the six communes assigned "a special status", certain facilities for the "fairly large French-speaking minority" which exists there. These justifications explain at the same time the restrictions to which the exceptions are subject. Why should the legislature permit the "concessions" made to French-speaking persons at Louvain and in the communes on the outskirts of Brussels to become "the starting point for francisation of the Flemish populations in these and neighbouring communes", when its "avowable" and "legitimate" purpose consists

precisely in ensuring in Flanders the formation of Dutch-speaking élites? The problems that arise in this matter are "problems of degree" and "how far those exceptions should be extended is a question not of law but of policy". The opinion of the Commission is somewhat "illogical and paradoxical" as the violation found by the majority "would disappear if the Belgian State simply withdrew the concessions" mentioned above.

31. Confirming before the Court the opinion expressed in its Report, the Commission begins by observing that Article 2 of the Protocol (P1-2), taken in isolation, "does not oblige the Belgian State to admit the Applicants' children to French schools - official or private - exceptionally or temporarily organised or maintained in the Flemish region": being "free either to establish or subsidise schools or to refrain from doing so", the State may "regulate admission to such schools as it sees fit". Two members of the Commission reach the same conclusion by different reasoning while three others consider it "incompatible with the first sentence of Article 2 (P1-2) (...) that the Belgian State should not allow French-speaking persons resident either in the unilingual Flemish region or in the area of the Brussels linguistic boundary to send their children to French schools in the vicinity". The Commission draws the Court's attention to these various individual opinions.

Although "the exclusion of the Applicants' children" does not seem to it to be founded "on technical or administrative considerations", the Commission does not, even so, consider that "this constitutes a violation of Article 8 (art. 8) of the Convention": if "the State, in spite of the compulsory schooling it had introduced, is not bound by the Convention to provide French education for French-speaking persons" in Flanders, "it follows that (...) it is not bound to open existing French schools to them or to subsidise French schools" which would admit "the Applicants' children under conditions not laid down by the linguistic legislation".

The Commission finally considers the question of whether or not Section 7 in fine of the Act of 30th July 1963 and Section 7 § 3-B of the Act of 2nd August 1963, on the point under consideration, comply with Article 2 of the Protocol and Article 8 of the Convention, this time read in conjunction with Article 14 (art. 14+P1-2, art. 14+8). Its answer is negative as regards Article 8 (art. 8) of the Convention and the second sentence of Article 2 of the Protocol (P1-2) but affirmative with respect to the first sentence of Article 2 (P1-2). The two provisions impugned by the Applicants seem to the Commission to figure among those which reflect a wish to assimilate minorities against their will into the sphere of the regional language. Not all of the inequalities of treatment created by Section 7 in fine of the Act of 30th July 1963, however, amount to discrimination. The two exceptions made in favour of certain foreign children, and the children of "professors, students and employees of the University" of Louvain are justified, in the first case, by the rules of international courtesy, and in the second by the

"bilingual character" of the University. Neither does the Commission see any discrimination "in the fact that the Institut du Sacré-Coeur at Heverlee admits only girls, or in the concession extended there to children enrolled for the school year 1962-1963" (Royal Decrees of 8th August 1963 and 30th November 1966).

On the other hand, the Commission believes that Section 7 in fine of the Act of 30th July 1963 is incompatible with the right to education as it is jointly safeguarded by the first sentence of Article 2 of the Protocol (P1-2) and Article 14 (art. 14) of the Convention, in so far as it closes the French schools at Louvain and at Heverlee to the "Applicants' children for the reason that they live in the Flemish region" (opinion expressed by eight votes to four). The position is the same as regards Section 7 of the Act of 2nd August 1963 in so far as paragraph 3-B excludes from the French-language classes in the six communes enjoying a special status those children whose parents do not reside within the communes, whereas the Dutch-language classes in these same communes "are open", according to paragraph 3-A, "subject to the availability of places", to "Dutch-speaking children" living in the neighbourhood and, in particular, in Wallonia (opinion expressed by seven votes to five).

The Commission does not believe that on this point it is "necessary to distinguish between official and recognised private schools". The latter would be "entitled" and "prepared" to "admit pupils without taking their parents' place of residence into consideration at all" but for the language legislation and the risk of losing their right to State subsidies. As regards the official schools, "one can of course conceive that they might be reserved", "for administrative or financial reasons", "to children living in one of the communes" where they exist. "The information supplied both by the Applicants and by the Belgian Government", however, shows the absence of such reasons. The "residence conditions" in question "can only be explained by a desire to prevent", in the Flemish region, "the spread or continuance of the French language and culture" if not to bring about even the assimilation of "minorities into the language or their surroundings". This intention is "particularly manifest in the case of the French schools at Louvain and Heverlee" where they admit "children from Wallonia" even though they refuse "the children of French-speaking persons living" on the spot. Consequently, it "matters little that neither the Convention nor the Protocol obliges the State to establish or subsidise any education whatsoever": "in this case such education exists and, where it is private, it is subsidised". The exclusion of the Applicants' children is, on analysis, a "hardship" and the Dutch-speaking children derive from it "no advantage". Would the simple abolition of French-language classes at Louvain, Heverlee, Drogenbos, Kraainem, Linkebeek, Rhode-St. Genèse, Wemmel and Wezembeek-Oppem remove the discrimination in question? The Commission does not think it need consider this possibility, one of the

effects of which would be to deprive the locality of Kraainem of a French school, a locality "which has a French-speaking majority": "what may happen as the result of a change in legislation in the near or distant future" does not concern the Commission. In any case it seems to the Commission "rather unlikely that the Belgian Government would consider adopting such a radical solution", which would probably be "difficult" to adopt in practice.

Five members of the Commission find no violation in the case of Kraainem and the five other communes on the outskirts of Brussels; four of them equally find no violation in that of Louvain and Heverlee. The Commission draws the Court's attention to their dissenting opinions.

4. Decision of the Court

32. The Court will examine in turn the legal and administrative measures governing access to French-language education at, on the one hand, Louvain and Heverlee, and, on the other, the six communes with special facilities.

Louvain and Heverlee belong to the Dutch-unilingual region. Although the legislature has authorised the maintenance of French-language education there, it has done so, above all, in consideration of the needs arising from the bilingual nature of the University of Louvain. The principles which govern the functioning of education in French in the two communes likewise determine the entrance requirements to this education. The benefits conferred by the provisions in dispute (Section 7 in fine of the Act of 30th July 1963 and the Royal Decrees of 8th August 1963 and 30th November 1966) therefore depend upon their purpose. Essentially, they are accorded to the French-speaking teaching staff, employees and students of the University of Louvain in whose absence the establishment could no longer retain its bilingual character. Likewise, if the French classes at Louvain and Heverlee are still open to children of French-speaking families living outside the Dutch-unilingual region, it is because they serve as teacher training classes for the bilingual University of Louvain. As for the privilege granted to certain children of foreign nationality, this is justified by the customs of international courtesy. Consequently, the exclusion of French-speaking children living in the Dutch unilingual region whose parents are not members of the teaching staff, students or employees of the University, does not amount to a discriminatory measure in view of the legitimacy of the specific objective of the legislature.

The situation is completely different in the case of the six communes "with special facilities", which belong to the agglomeration surrounding Brussels, the capital of a bilingual State and an international centre. According to the information supplied to the Court, the number of French-speaking families in these communes is high; they constitute, up to a certain point, a zone of a "mixed" character.

It is in recognition of this fact that Section 7 of the Act of 2nd August 1963 departed from the territorial principle, as the Court noted when dealing

with the third question. It appears, indeed, from its first paragraph that the six communes no longer form part of the Dutch unilingual region, but constitute a "distinct administrative district" invested with its own "special status". From this the second paragraph draws a first set of consequences: it provides in substance that the six communes concerned enjoy a bilingual system "in administrative matters". As to the third paragraph, the compatibility of which with Articles 8 and 14 (art. 8, art. 14) of the Convention and with Article 2 of the Protocol (P1-2) is contested by the Applicants, it applies to "educational matters". It provides that the language of instruction is Dutch in the six communes; it requires nevertheless, the organisation, for the benefit of children whose maternal or usual language is French, of official or subsidised education in French at the nursery and primary levels, on condition that it is asked for by sixteen heads of family. However, this education is not available to children whose parents live outside the communes under consideration. The Dutch classes in the same communes, on the other hand, in principle accept all children, whatever their maternal or usual language and place of residence of their parents. The residence condition affecting therefore only one of the two linguistic groups, the Court is called upon to examine whether there results therefrom a discrimination contrary to Article 14 of the Convention, read in conjunction with the first sentence of Article 2 of the Protocol (art. 14+P1-2) or with Article 8 (art. 14+8) of the Convention.

Such a measure is not justified in the light of the requirements of the Convention in that it involves elements of discriminatory treatment of certain individuals, founded even more on language than on residence.

First, this measure is not applied uniformly to families speaking one or the other national language. The Dutch-speaking children resident in the French unilingual region, which incidentally is very near, have access to Dutch-language schools in the six communes, whereas French-speaking children living in the Dutch unilingual region are refused access to French-language schools in those same communes. Likewise, the Dutch classes in the six communes are open to Dutch-speaking children of the Dutch unilingual region whereas the French classes in those communes are closed to the French-speaking children of that region.

Such a situation, moreover, contrasts with that which arises from the possibility of access to French-language schools in the Greater Brussels District, which are open to French-speaking children irrespective of their parents' place of residence (Sections 5 and 19 of the Act of 30th July 1963).

It consequently appears that the residence condition is not imposed in the interest of schools, for administrative or financial reasons: it proceeds solely, in the case of the Applicants, from considerations relating to language. Furthermore the measure in issue does not fully respect, in the case of the majority of the Applicants and their children, the relationship of proportionality between the means employed and the aim sought. In this

regard the Court, in particular, points out that the impossibility of entering official or subsidised French-language schools in the six communes "with special facilities" affects the children of the Applicants in the exercise of their right to education, all the more in that there exist no such schools in the communes in which they live.

The enjoyment of the right to education as the Court conceives it, and more precisely that of the right of access to existing schools, is not therefore on the point under consideration secured to everyone without discrimination on the ground, in particular, of language. In other words, the measure in question is, in this respect, incompatible with the first sentence of Article 2 of the Protocol, read in conjunction with Article 14 (art. 14+P1-2) of the Convention. In these circumstances, the Court does not consider it necessary to examine whether the said measure respects Article 8 (art. 8) of the Convention, read in conjunction with Article 14 (art. 14+8) or in isolation.

F. As to the sixth question

33. The sixth question concerns the issue of whether or not, in the case of the Applicants, there is a violation of Article 2 of the Protocol (P1-2) and Articles 8 and 14 (art. 8, art. 14) of the Convention, or of any of these Articles.

> "in so far as the Acts of 1932 resulted, and those of 1963 result, in absolute refusal to homologate certificates relating to secondary schooling not in conformity with the language requirements in education."

1. The Facts

34. At the end of each stage of secondary schooling the teaching establishments deliver to pupils a certificate specifying the course of studies followed and that they have been successfully completed. In fact, Belgium has not adopted the "Baccalauréat" system.

The certificate granted on the completion of secondary studies states that the holder is considered suitable for higher education. However it acquires legal value only after "homologation" by a board, set up for the purpose for the whole of the country, the homologation board. This examines only the certificates. Homologation is granted only if the studies comply with the legal requirements.

The holder of a non-homologated certificate may go on to higher studies, for instance at a University, and obtain a "non-recognised" ("scientifique") university degree, but not a "legally recognised" or "academic" degree. However, only "legally recognised" or "academic" degrees give access to a number of posts and professions: careers in the administration or the judiciary, the Bar, the profession of notary and the medical profession, etc.

The holders of non-homologated certificates who aspire to such professions or who wish to acquire a legally recognised or academic degree, must take a full examination before a body called "the Central Board".

35. The homologation of a certificate depends on compliance not only with the technical and academic requirements laid down by law but also with those which concern the educational linguistic system.

The Act of 12th May 1910 provided that, in order to be able to sit the examination of candidat en philosophie et lettres, candidat notaire, candidat en sciences naturelles, candidat en sciences physiques et mathématiques, holders of certificates which were not admissible for homologation for linguistic reasons had to take before the Central Board an additional examination relating to whichever of the two national languages had not been the language of their schooling at intermediate level. The position was similar in the draft stage of the Act of 15th July 1932; the explanatory memorandum of the Bill emphasised that those who aspired to a "profession for which a legally recognised degree was required should furnish proof of their knowledge of the language of the region in which they would be called upon to practise" The Belgian Parliament, however, modified this draft which became the Act of 15th July 1932 on the conferring of academic degrees.

36. The Act of 15th July 1932 repealed that of 12th May 1910 (Section 4). Its main provisions were as follows:

"Section 1

No one may be declared eligible to take the examination for the degree of candidat en philosophie et lettres, candidat en sciences or candidat en sciences naturelles et médicales unless he possesses a certificate of secondary schooling, issued in accordance with Sections 5 to 8 of the Act of 10th April 1890/3rd July 1891 on the conferring of academic degrees, certifying:

A. If such certificate has been issued by an educational establishment situated in the Flemish region or in the Walloon region:

1. That the courses followed by the person concerned were made in the language of the region;

2. That the person concerned has, in each year of his schooling, been taught a second modern language, as referred to in Section 10 of the Act on the Language of Instruction in Primary and Secondary Schooling, for at least four hours a week.

B. If the certificate has been issued by an educational establishment situated in a commune forming part of the Brussels urban complex or in a bilingual commune on the language boundary:

1. That the courses followed by the person concerned were so organised as to ensure that his maternal or usual language – either French or Flemish - was accorded pre-eminence as the language of instruction;

2. That the person concerned has in each year of his schooling been taught Flemish, if his schooling has been in French, or French, if his schooling has been in Flemish, for at least four hours a week.

Where the person concerned has had his schooling in one of the special classes referred to in Section 9 of the Act on the Language of Instruction in Primary and Secondary Schooling or in an analogous special class at an educational establishment not subject to the basic legislation on secondary education, his certificate of secondary schooling shall certify that he fulfilled the conditions imposed by the aforementioned Section 9 for admission to such a special class, and that the provisions of Section 10 of the said Act with regard to the teaching of a second language have been observed.

The certificate shall clearly indicate under which regime the bearer's schooling was carried out.

Section 2

In applying the preceding Section to certificates issued by educational establishments not subject to the basic legislation on secondary schooling, the maternal or usual language of a child shall be determined by a declaration made by the head of his family. If there be any doubt as to the correctness of such declaration, the head of such establishment, or his deputy, assisted by two members of the teaching staff, shall, at the beginning of the school year, investigate the matter.

The certificate of secondary schooling shall expressly state that this procedure has been strictly followed.

Section 3

Where the bearer of a certificate of secondary schooling has had his schooling at two or more educational establishments situated in different regions, such certificate shall certify that the provisions of Article 1 have been complied with in each region.

Where the bearer began his secondary schooling abroad and completed it in Belgium, the certificate shall certify that the provisions of Section 1 have been complied with so far as concerns that part of his schooling which took place in Belgium.

Section 5

In applying the present Act to the German-speaking communes, exceptions justified by local conditions may be provided for by a motivated Royal Decree, to be published in the Official Gazette."

The refusal to homologate certificates which do not conform with the linguistic legislation was later extended to various types of studies not governed by the Act of 15th July 1932 (Act of 27th July 1947, Royal Decree of 5th May 1953 and Section 23 of the Act of 29th May 1959).

37. Section 24 of the Act of 30th July 1963, Sections 4-8 of which determine the language of instruction in the different regions of the

Kingdom, repealed the Act of 15th July 1932. Under Section 19 of the 1963 Act:

> "Only school-leaving certificates that have been issued by the educational establishments referred to in Section 1 or by other independent educational establishments, in accordance with the provisions of this Act, may be subject to homologation.
>
> An exception shall be made in the case of certificates issued by a university by way of exception from Section 4 of this Act to recognise studies during a preparatory year for the degree of candidat ingénieur civil."

Section 1, to which Section 19 refers, lays down that the Act of 30th July 1963 is applicable to "official nursery, primary and secondary schools and teachers' training, technical and artistic colleges" and to "similar independent establishments subsidised or recognised by the State". As for Section 4, it stipulates that "the medium of instruction is Dutch in the Dutch-language region, French in the French-language region and German in the German-language region, except for the cases laid down in Sections 6-8".

The scope of Section 19, cited above, has been the subject of controversy between the Applicants and the Belgian Government. The Applicants maintained that, according to Section 19, taken with Section 1, the homologation of secondary school leaving certificates no longer depends, as under the Act of 15th July 1932, exclusively upon the "linguistic regularity" of the studies in question, but also upon that of the earlier nursery and primary education. The Belgian Government contested the accuracy of this interpretation. After examining the problem, the Commission came to the conclusion, together with the Belgian Government, that Section 19 in actual fact applies only to secondary education. The views developed by the Commission on this point seem entirely convincing to the Court.

38. Under the 1963 legislation, as under that of 1932, refusal of homologation can be remedied by an examination before the Central Board. As the Belgian Government has emphasised, "the Central Board was not originally created as a means for escaping the provisions of the language laws, but with a social and democratic aim: it enables children from poor families, whose parents could not afford to pay for regular schooling, to acquire nevertheless a legally recognised diploma. It also serves to correct mistakes where a child has gone into the wrong stream". Hence there are among those who appear before the Board, in addition to pupils who have completed their studies without conforming to the language laws, "many persons, who are self-taught, have received an irregular education or have followed a correspondence course". Central Boards exist not only at the level of intermediate education (lower and higher), but also for commercial education, teachers' training, university education and the most important branches of technical and artistic education.

The examination covers all the subjects contained in the official syllabus of the studies covered. As regards secondary education, the candidates have the option of presenting themselves in two stages which correspond to the two cycles - lower and higher - of this education. The tests are conducted in Dutch, French or German at the choice of the person concerned. Enrolment is subject to the payment of fees which at present amount to 100 Belgian francs, for the obtaining of the diploma permitting entry to higher secondary education (examen de maturité), and 200 Belgian francs for that of the certificate of higher secondary studies or the diploma of admission to the examination of candidat ingénieur civil (Official Gazette of 4th May 1968, pages 5103-5104).

The further information supplied to the Court in January 1968 by the Belgian Government and the Commission shows "that the number of certificates awarded by schools and entitled to homologation is greater for Dutch than for French education" but that "the opposite is true of certificates awarded by the Central Board". The Commission attributes this phenomenon to the number of French-speaking candidates who do not have their school-leaving certificate homologated owing to the irregularity of their studies for linguistic reasons.

Neither the Belgian Government nor the Commission have been able to satisfy the Court's desire to obtain a table classifying, on the one hand, the pupils possessing a certificate signifying the completion of their secondary education but who have not conformed with the language legislation and, on the other hand, the other candidates. The Belgian Government points out that "the enrolment forms of the candidates intentionally do not bear any question concerning prior education", as it is desired that the Central Board should enjoy a position of "complete objectivity".

It appears that the percentage of successful candidates who register before the Central Board for the higher grade of intermediate education generally fluctuates between 25 and 50 % for each of the two annual examinations and that fairly often it is lower in the case of children sitting the examination in French than in Dutch. According to the Belgian Government, it "corresponds roughly to the percentage of students who, having opened their secondary studies, manage to complete them successfully". A candidate who fails at the first attempt may present himself before the Central Board as many times as he wishes.

2. Arguments presented by the Applicants before or through the Commission

39. The Applicants are of the opinion that although the provisions in force prior to the legislation of 1932 (Act of 12th May 1910) were "eminently fair" in this matter, the Act of 15th July 1932 violated and Section 19 of the Act of 30th July 1963 violates, on the point under consideration, Article 2 of the Protocol (P1-2) and Articles 8 and 14 (art. 8,

art. 14) of the Convention. In their view the refusal of homologation renders "illusory" and a "hoax" the sending of children to private French-language schools situated in Flanders as these schools deliver only "a mere piece of parchment of no practical use". It is true that employers are sometimes "at a pinch" satisfied with such a certificate; it also sometimes happens that pupils "at boarding schools for girls" are less concerned with getting a legally valid diploma than with acquiring "a good education". These are, however, "extremely rare" cases. "In official organisations, the civil service, and local government", only the legally recognised diploma counts, and this is "an essential document" in the career of everyone in Belgium. The Applicants do not dispute that the possession of a certificate without homologation is sufficient to allow access to "non-recognised degrees" as opposed to "legally recognised" or "academic" degrees. However the very existence of these two distinct degrees implies a difference in their value. The non-recognised degrees are of interest to almost no-one but foreigners. They are divided into two categories, the first comprising 118 degrees corresponding to certain of the 3469 legally recognised degrees, and the second "degrees awarded for courses not covered by law". The holder of a non-homologated certificate is not, in principle, admitted to technical education, higher level secondary commercial education and higher commercial studies, or "the most attractive professions", such as Bench and Bar, in general the civil service and local government, the medical and para-medical professions, etc. To the Belgian Government's objection that the Convention does not guarantee the right to exercise a profession, the Applicants replied that they are not invoking such a right but rather "the freedom of the father of the family, the right to education, the right to respect for family life" and the principle of non-discrimination. In their opinion, the refusal of homologation amounts to a "penalty" in disguise, to a "punitive" measure which condemns the "dissident" establishments to close down. It is not based on administrative or technical considerations relating, for example, to the "value of the teaching" or "its conformity with the curriculum", but is to be explained only by a deliberate wish to "stamp out" French in Flanders and to "dutchify" Brussels and its surroundings. It thus assumes an arbitrary and discriminatory character. Effectively it condemns anyone who has "received a French education in Flanders or a Flemish education in Wallonia", to be a "second class citizen". "The most flagrant" discrimination is to be found "at the international level" for Belgium recognises the equivalence of secondary school leaving certificates conferred in a number of States with which it has concluded bilateral or multilateral agreements.

As regards the possibility of obtaining a legally recognised diploma, by going before the Central Board, the Applicants consider it to be in substance a "palliative" of a "discriminatory" nature. On this matter they emphasise that "a certificate of secondary school studies made in French in the Flemish

region" and in accordance with the "official syllabus", is "tainted with nullity even though it attests to the same amount of work and knowledge as a Flemish diploma or a French diploma issued in the Brussels or Walloon regions". Furthermore, the candidates must take at the same time, "an all embracing examination" which is moreover "difficult", carrying "every subject taught from the first class of high school education up to and including the last"; it is therefore necessary for such candidates to make "an infinitely greater effort" than similar students who acquire their diplomas "year by year". In addition, and without mentioning the "entry fee", they appear before "an examinations board consisting of five strangers"; consequently they find themselves "in a very different psychological situation from a child who passes his examinations annually and piecemeal before his own teacher". This is why recourse to the Central Board remains an "exception".

The Applicants point out that their thesis in no way implies, in their view, that States are bound, by virtue of the Convention and the Protocol, to grant to colonies of foreigners residing on their territory the same facilities as to their nationals. Unlike Italian or Polish, "French is in Belgium a national language"; as "full" citizens, the French-speaking Belgians are entitled to be treated on a completely equal footing with their compatriots.

3. Arguments presented before the Court by the Belgian Government and by the Commission

40. The Belgian Government is of the opinion that the legislation in dispute in no way infringes any of the three Articles (P1-2, art. 8, art. 14) invoked by the Applicants on the question under consideration. While its principal argument is that the Articles are totally inapplicable (cf. supra), it presents several subsidiary arguments.

First, "scholastic emigration", whether accompanied or not by "some mixing of education", enables people to avoid the refusal of homologation. "French-speaking pupils resident in Flanders may attend official, or subsidised and recognised French-language secondary schools in the Brussels conurbation" or in Wallonia, "where they can obtain legally valid secondary leaving certificates"; it is moreover open to them to obtain the same result by "starting their secondary education in a Dutch-language school in Flanders" and to complete it "in a French-language school" in Brussels or Wallonia. It is true that the declaration of the head of the family is "checked" in the Brussels urban district (cf. supra). However it emerges from the provisions in force and in particular from a Royal Decree of 30th November 1966, that as long as the falsity of the declaration by the head of the family is not finally established, the child may continue to attend the school " to which he was admitted"; his education there will be deemed to be in accordance with the language law and will "in no way" prevent "homologation of his leaving certificate".

As for the French-language secondary schools in Flanders, they issue only certificates which may not be homologated. Moreover the majority of their pupils are girls whose parents wish them to "be occupied", "from the age of twelve to the age of eighteen", "in a decent and proper way" and who therefore "do not need any diploma". Besides, non-homologated certificates are not without value: employers are sometimes satisfied with them. It is true that the holders of such certificates cannot enrol for higher-level technical education, higher-level artistic education, higher-level teachers' training, higher-level secondary commercial education and higher commercial studies, nor are they able to sit for a legally recognised university degree, not to take up any career that requires a diploma, in particular "a career in an official recognised branch of the legal profession - Bench, Bar or notary" - "a career in the medical and para-medical professions", "a career in teaching", "a career as a Government engineer" or a career in the higher grades of the civil service. On the other hand, "university education leading to a non-recognised degree", except for commercial studies, "falls entirely outside the field of application of the language laws". Non-recognised degrees, "awarded by universities under conditions which they are completely free to decide for themselves", are of considerable interest to those who wish to pursue "a career in industry and commerce" or a "para-legal or technical" career. Some of these, for example, the degree of "Doctor of Laws (non-recognised)", are the "twin brothers" of those "met with in legally-recognised education". For others, as numerous as they are varied, there are no equivalent legally-recognised degrees.

Therefore, refusal of homologation constitutes a mere "inconvenience" and not a "penalty" in disguise. As it does not concern "the right to organise teaching and to enjoy the natural results thereof", it is in no way "equivalent to a denial of the right to education"; it does not affect the Applicants "in the field of education but in the field of its consequences". Then, the Convention it says, contains "an unfortunate lacuna", which is not to be explained as "inadvertent"; it does not contain "a single Article on the exercise of a profession". While not wishing to take this "somewhat exegetical" argument to extremes, the Belgian Government is of the opinion that it is necessary to show "a certain prudence" in a sphere not expressly covered by the Convention.

Moreover, the holders of non-homologated certificates may acquire a legally-recognised diploma by sitting - in the language of their choice - an examination before the Central Board. The Belgian Government does not deny that "the number of failures" before the Central Board is "considerably greater" than "at the end of secondary education in official or recognised schools", but such a situation seems to it to be "inevitable". This is so because "pupils who sit the examinations in the last (...) year of secondary school form a group that has survived severe elimination as a result of the

examinations and of the failures of the five previous years". On the other hand, pupils who come before the Central Board "have not been so severely selected" and "a by no means negligible number" of them "are wholly or partially self-taught". The syllabus of the examination in question is so planned as to give to candidates "a reasonable chance of success". As regards the entrance fee payable, the cost is "modest".

The Belgian Government further emphasises that as a general rule, "a university graduate, no matter what the language of his degree, may settle anywhere in the country and take up any profession for which his degree fits him". In Belgium, admission to only certain professions - "the Bench, the civil service, education provided, aided or recognised by the public authorities, etc" - is dependent on a command of the language of the region; it is possible "to have no knowledge at all of Dutch and yet to practise medicine, law or engineering in Flanders". What would happen if the Belgian State were to agree to the homologation of school leaving certificates issued in Flanders by French-language private schools but at the same time introduced legislation that stipulated certain requirements relating to the knowledge of languages for the exercise of any liberal profession? According to the Government this would create an "unhealthy situation": on the one hand, one "would be encouraging all French-speakers living in Flanders to send their children" to such schools; on the other, one would be denying these children entry "to the careers to which they aspire", as such establishments would not give them a sufficient grounding in the necessary language. In the Government's view, such legislation would be "much more severe, much stricter and more dishonest" than the provisions now in force and "would constitute a veritable trap". Yet it would violate neither "the letter nor the spirit of the Convention". A fortiori, the laws now in force being "more liberal and wiser", respect the Convention and the Protocol.

The Belgian Government furthermore lays great emphasis on one of the consequences which would, in its opinion, follow the adoption of the Applicants' thesis. It recalls that the aim of the Convention and the Protocol is to protect Human Rights and not those of the citizen, for the rights and freedoms safeguarded are secured to all persons within the jurisdiction of the Contracting States, "including foreigners and even nationals of non-signatory States", and this "without discrimination on any ground such as national origin" (Articles 1 and 14 of the Convention) (art. 1, art. 14). From this the Government infers that "the Applicants cannot invoke before a European judicial authority more extensive rights than those to which foreigners are entitled": "can it be said that a foreign minority in the Belgian coalmining area may demand that funds be provided for education in their own language and that the leaving certificates in respect of such education be automatically recognised?"

Finally "legitimate grounds" justify the "penalty of denying homologation". Far from wishing "to liquidate the French-speaking ruling

class" in Flanders, the legislature has succeeded in its attempt "to avert certain crises which threatened" and in "creating in Flanders an intelligentsia with a good knowledge of Dutch", capable thereby of accomplishing its "social duty".

The Belgian authorities have had as their point of departure two facts: the presence, in Belgium, of "two large population groups speaking separate languages and concentrated in different areas" and "the almost complete absence of a Dutch-speaking élite", which is to be attributed to the "phenomenon of francisation" which has taken place in "the Flemish area". Wishing to "calm certain long-standing conflicts", Parliament originally thought in terms of a "bilingual solution"; this solution was however abandoned as it did not permit the creation of a "truly Dutch-speaking élite". It was thus led to adopt a territorial system, judging that "the best way to ensure collaboration" and "harmonious co-existence" between the two large "language communities within a unitary national State" was "to give predominance, not exclusive rights, for freedom is guaranteed in each part of the country, to the regional language". It was especially considered that "in the interests of the Flemish community" and to remedy "serious social and political tensions", it was necessary to encourage "attendance at Dutch-language schools" and "not to give help and encouragement to educational institutions" whose effect was to encourage "francisation of the élite". How could a Dutch-speaking élite in Flanders have been established without "halting" or "checking" this "phenomenon of active francisation"? In "disapproving" the second of these purposes while "endorsing the first", the Commission is adopting a position which is scarcely coherent.

In the view of the Belgian Government, the education provided "in unilingual French-language schools" in Flanders "was good in all subjects except one: Dutch language". Now, in the view of the Belgian legislator, and in opposition to the implicit opinion of the Commission, the fact that a school in Flanders "provides only an inadequate knowledge" of Dutch does affect "the quality of the education" in question. The Convention and the Protocol in no way require a State "to recognise the validity of diplomas issued by a particular educational establishment, once such education is satisfactory from the technical point of view"; neither do they forbid a State from making such recognition "dependent upon certain linguistic qualifications", and "from reserving" a number of functions or professions "for those with the technical and linguistic knowledge necessary to guarantee their suitability". According to the Belgian Government those who wish "to play a leading part in the country" should "desire the social and cultural advancement" of the people and, consequently, acquire "a sufficient knowledge of the language" of the latter.

The "legitimate" purpose thus followed has been achieved; "if, after 1932, many Flemish parents preferred to send their children to Dutch-language schools, the sole reason was, and the main reason still is", that in

Flanders only certificates issued by such schools are homologated. "From that time, the Flemings" have a "numerous upper class" and "Flemish separatism has disappeared".

In short, "the Belgian idea" involves no "unlawful discrimination against minorities". This is not peculiar to Belgium: in several other countries, such as Switzerland, the principle of non-discrimination is equally "subject" to "the principle of regional homogeneity in educational matters".

41. The Commission confirmed before the Court the opinion which it had formulated on this point in its Report.

Refusal of homologation does not infringe Article 2 of the Protocol (P1-2) taken in isolation. It is true that the "right to education" comprises, at least "in Belgium's present economic and social circumstances" and "in those of other countries that have signed the Protocol", "the right to draw full benefit from the education received" (cf. supra). Article 2 (P1-2), however, leaves the State "free to establish or subsidise schools or to abstain from so doing" (cf. supra). From this it follows that "the Belgian State is not obliged by the Article (P1-2) in question to grant homologation of leaving certificates issued by any schools whatsoever, whether or not they comply with the requirements of the language legislation". According to the Commission, "the fact that the legislation attacked strikes at education given in a language which is generally spoken by a large part of the population and is considered as one of the national languages may appear particularly hard". "However, the fact is irrelevant from the point of view of Article 2 of the Protocol (P1-2)", which "authorises no distinction between nationals of a particular State and foreign nationals". Two members of the Commission reached the same conclusion by different reasoning, but three others see the measure in dispute as "a restriction which prevents the individual from deriving the profit normally inherent in the education which he receives" and consequently as "a partial denial of the right to education". The Commission draws the attention of the Court to those various individual opinions.

Nor is there any violation of Article 8 (art. 8) of the Convention on the point in question: the possibility of "grave unjustified disturbances caused in the private or family life" of the Applicants is relevant "only to primary education" and the question of homologation does not arise at this level (cf. supra).

The Commission finally examines the question as to whether or not the refusal of homologation complies with the requirements of Article 2 of the Protocol and Article 8 of the Convention, here read in conjunction with Article 14 (art. 14+P1-2, art. 14+8). It finds no such non-compliance as regards Article 8 (art. 8) of the Convention and the second sentence of Article 2 of the Protocol (P1-2) but does find it with respect to the first sentence of Article 2 (P1-2).

In its endeavours to discover "the general effect of the legislation attacked", the Commission is of the opinion that the latter has "neither the object nor the effect of ensuring the qualifications thought necessary for the exercise of certain functions or professions", "nor indeed of ensuring linguistic knowledge". Where such knowledge "is required, a candidate has to show that he possesses it": "it is not enough for him to have complied with the linguistic legislation during his studies". In this connection, the Commission observes that "a knowledge of the regional language is required" only for the exercise of certain "liberal professions" ("the Bench", "the Civil Service", "public and State-recognised education", etc), that the study of the second national language is almost everywhere optional in Belgium, especially after the entry into force of the Act of 30th July 1963 and that "a pupil undergoing an examination before the Central Board does so in the language of his choice". From this it concludes that it is "possible" at least in theory, "to obtain legally recognised university degrees without having learned the second national language". It adds that degrees conferred by the four Universities in Belgium, the bilingual Universities at Brussels and Louvain, the Dutch-language University at Ghent and the French-language University at Liege, permit their holders, "anywhere in the Kingdom and without giving evidence even of a rudimentary knowledge of the language of the region", to "occupy any of the public offices and practise any of the professions for which knowledge of the regional language is not specifically required". "Conversely, a Belgian national who has received a secondary education which is not in accordance with the linguistic legislation", and then "obtained a non-recognised degree at a university","is not free to practise anywhere in Belgium" - except by taking "a full examination before the Central Board" - "to hold the offices or practise the professions for which his studies have prepared him", even if he has "a perfect knowledge of the two national languages".

In reality, in the Commission's view, the legislation in dispute aims at the "assimilation of minorities against their will into the sphere of the regional language"; it does not seek solely to protect "the Dutch language and culture in Flemish areas" and to "halt the spread of the French language in those areas". On this point, the Commission in particular recalls "that homologation is refused by reason of the mere fact that (...) the pupils' secondary education has not been in accordance with the linguistic legislation", "even if only for a year or a few months". It further emphasises "that a pupil who has received French education in Wallonia may obtain homologation of his certificate, unlike a pupil who has received absolutely identical French education in the Flemish region". The first may then "obtain a legally recognised degree", whereas the latter, even if he successfully pursues the "same studies" at university must be satisfied with a non-recognised ("scientifique") degree, unless "he has passed a full examination before the Central Board in the language of his choice". It is

true that these rules apply equally to "schooling completed in the Dutch language in an establishment in Wallonia". In practice, however, they hardly touch education given in Dutch: although "before the 1932 Acts there were French secondary schools in the Flemish region", "no one has stated before the Commission that there were at that time Dutch secondary schools in Wallonia". Here again the "parallelism" invoked by the Belgian Government "works solely against the French-speaking population".

This being so, eight members of the Commission express the opinion that the refusal to grant homologation infringes the right to education as it is jointly defined by Article 2 of the Protocol (P1-2) and Article 14 (art. 14) of the Convention.

It is true that "neither the Convention nor the Protocol guarantees access to any functions or occupations whatsoever". The first sentence of Article 2 of the Protocol (P1-2) nevertheless enshrines, "in spite of its negative formulation", "the right of every person to education". Now, in our age, education is not "in the immense majority of cases", an "end in itself". "Those who receive instruction (...) do so not disinterestedly, but with the intention of preparing themselves for the work" upon which they propose to embark on completion of their studies. To the Commission, "the right to education would be only an illusion if it did not include the right to draw full benefit from education", and Article 2 (P1-2) would be "meaningless" if it were accepted that it did no more than guarantee the right "to a purely humanist education". "Any legislation which, while not denying anyone the right to education, were to lay down discriminatory measures with regard to the advantages that individuals or groups of individuals may derive from their education", including "the exercise of those functions or professions to which the education in question normally gives access", would not, in the Commission's view, violate "Article 2 of the Protocol (P1-2) considered in isolation" but would infringe "that Article read in conjunction with Article 14 (art. 14+P1-2) of the Convention", for it would not "secure enjoyment of the right to education for everyone without discrimination".

In Belgium, certain advantages are reserved to the holders of homologated certificates. In order to determine whether or not this constitutes a "discrimination" incompatible with Article 14 (art. 14), the Commission considers it necessary to examine closely the "reasons" behind the refusal to grant homologation. In its opinion what are involved are not "academic considerations" (cf. supra), nor administrative reasons. On this last point, the Commission admits that the Belgian State does not inspect "schools which do not observe the linguistic legislation". It observes, however, that "it would be of no use for a school which did not comply" with the linguistic legislation on all points to "declare that it intended" to submit to being inspected: by reason of Section 24 of the Act of 29th May 1959, "the State would refuse to act on the declaration". According to the Commission, this refusal also involves "discrimination contrary to Article

14 (art. 14)": "there would be no serious administrative or financial difficulty in arranging for the inspection of schools in Dutch-speaking areas which provide education in French" or of "Flemish schools in the Walloon area". In actual fact the measure in dispute constitutes one of the means of implementing the policy of the Belgian State which certainly wishes "to encourage the Dutch language and culture in Flanders, but which has exceeded this aim by trying to prevent the spread or even the continuance of the French language in that region".

It is true that "pupils with certificates not eligible for homologation" have the possibility of obtaining "wholly valid diplomas by taking a full examination before the Central Board". This "way round" the refusal of homologation is not, however, of much value. The Applicants have shown, and the Belgian Government does not dispute the fact, that the examination in question "is a very dangerous reef to negotiate" and "has serious drawbacks and risks". In any case, the Commission does not consider "the institution of the Central Board" to be a "remedy" worthy of the name, since the refusal of homologation is based solely on the linguistic irregularity of the education followed. In reality the "obligation" to appear before the Central Board represents a "hardship" which is not warranted by "any regard to the general interest" and which, "moreover", does not confer "any privilege on the young Dutch-speaking people who are exempt from it". In any event, those "circumstances which may on occasion mitigate" the effects of the refusal of homologation (Central Board, scholastic emigration, with or without "mixing of education", "non-recognised degrees" etc.) cannot, in the Commission's opinion, remove the violation, if violation there be, resulting from this refusal.

The Commission does not overlook the fact that "fairly large foreign colonies" exist in Belgium and that the law allows them to establish schools where education is given in "Italian, Polish or any other language".

The objection raised on this point by the Belgian Government (cf. supra) "is not conclusive", however. It does not take into account the fact that the refusal of homologation applies to certificates issued not only "by schools which do not observe the whole of the linguistic legislation" but also "by private schools recognised and subsidised by the State, or even by official schools, when it is not apparent from the certificates" that their holders "have complied personally with the requirements of the language Acts throughout their secondary schooling". Moreover, the refusal of homologation does not have "the same consequences" for "Belgian citizens" as for "foreign nationals". "The latter, even if they hold valid diplomas issued by the Belgian authorities, do not have access to public office or to certain professions" which are reserved to Belgian nationals.

In any case, the Government's argument lacks foundation in "relation to Article 14 (art. 14)". "In the light of this Article (art. 14)", an examination must be made as to whether "enjoyment of the right to education is secured

to all without discrimination". Now the Commission believes that, in conducting this examination, it "cannot ignore the fact" that "in Belgium", French "is one of the official languages" and "the maternal or usual language of nearly half" of the population. In its opinion, the Belgian State could "rely upon very good grounds for not recognising education" received in Belgium "in Italian or Polish private schools": it would have first to introduce "school inspection" which would entail "appreciable administrative difficulties and financial burdens". "Moreover", the Belgian State "might have good reasons for considering it undesirable that a completely foreign language should take root in its territory". From this the Commission concludes that "from the standpoint of Article 14 (art. 14)", "there may be valid reasons, eliminating the idea of discrimination, for not granting to the schools of foreign communities the same treatment" as to schools "established by Belgian nationals for Belgian nationals in which education is given in one of the national languages". In the present case, the only "relevant" comparison is that between the legal situation of the "French-speaking community" and the "Dutch-speaking community".

Consequently the refusal of homologation appears to be "irreconcilable with Article 2 of the Protocol read in conjunction with Article 14 (art. 14+P1-2) of the Convention". In so far as it applies to certificates covering schooling not in conformity "on all points" with the "legal requirements with regard to the language of instruction", this refusal amounts to a "hardship based solely on language and thus contrary to Article 14 (art. 14)". The granting of homologation in no way constitutes a "privilege" or a "favour", but "merely the confirmation of regular schooling", "the normal consequence of education received in a secondary school, provided of course that the school satisfies the law's academic requirements". By depriving "certain citizens", "for purely linguistic reasons" and for reasons "quite extraneous to actual educational requirements", of the benefit of education received, the Belgian State has established a "discrimination" incompatible with Article 14 (art. 14).

Four members of the Commission, however, find no violation on the point under consideration: the Commission draws the attention of the Court to their dissenting opinions.

4. Decision of the Court

42. The provisions of the Acts of 1932 and 1963 which provided for or still provide for the refusal of homologation of certificates relating to secondary schooling not in conformity with the language requirements in education, infringe neither the first sentence of Article 2 of the Protocol (P1-2) nor Article 8 (art. 8) of the Convention considered by themselves.

The right to education, which is enshrined in the first sentence of Article 2 of the Protocol (P1-2) is not frustrated by the Acts criticised. In particular the right to obtain, in conformity with the rules in force in each State and in

one form or another, the official recognition of studies completed has not been disregarded by these legal provisions. Leaving this right intact, they merely subject its exercise to the express condition of an examination before a central board. This examination does not constitute a test of excessive difficulty. It appears from the documents produced and the statements made before the Court that the candidate may take it in two stages and in the national language of his choice and that any candidate who fails may present himself before the Central Board as many times as he wishes. Moreover, the percentage of failures recorded before the Central Board at the higher level of secondary education is in no way abnormal. Moreover, the entrance fees for the examination are very small.

As regards Article 8 (art. 8) of the Convention, invoked by the Applicants before the Commission, it is impossible to see how the system of the Central Board for secondary education could entail a violation of the right to respect for private and family life. Here again, the Court finds that there is no violation.

It remains to be decided whether the legal provisions referred to in the sixth question are compatible with the first sentence of Article 2 of the Protocol, read in conjunction with Article 14 (art. 14+P1-2) of the Convention.

This question must be examined in connection with the criteria which the Court has set out above for determining whether a given measure is of a discriminatory character within the meaning of Article 14 (art. 14).

On this matter, the Court first notes that the legislature, in adopting the system in issue, has pursued an objective concerned with the public interest: to favour linguistic unity within the unilingual regions and, in particular, to promote among pupils a knowledge in depth of the usual language of the region. This objective concerned with the public interest does not, in itself, involve any element of discrimination.

As regards the relationship of proportionality between the means employed and the objective aimed at, greater difficulties are encountered in finding the answer.

One of them lies in the fact that the children who, as holders of a certificate that is not admissible for homologation for purely linguistic reasons, must take an examination before the Central Board, are in a less advantageous position than those pupils who have obtained a school leaving certificate which is admissible for homologation. However, this inequality in treatment in general results from a difference relating to the administrative system of the school attended: in the first of the two cases mentioned above, the position usually is that the establishment is one which, by virtue of the legislation in force, is not subject to school inspection; in the second, on the other hand, the certificate is necessarily issued by a school which is subjected to such inspection. Thus the State treats unequally situations which are themselves unequal. It does not deprive the pupil of the

profit to be drawn from his studies. The holder of a certificate not admissible for homologation may, indeed, obtain official recognition of his studies by presenting himself before the Central Board. The exercise of the right to education is not therefore fettered in a discriminatory manner within the meaning of Article 14 (art. 14).

It is not, however, impossible that the application of the legal provisions in issue might lead, in individual cases, to results which put in question the existence of a reasonable relationship of proportionality between the means employed and the objective aimed at, to such an extent as to constitute discrimination.

During the oral hearing before the Court, the Commission put forward the case of a refusal of homologation in respect of a pupil who, from the beginning of his secondary studies, had received an education not in conformity with the linguistic legislation, even if only for a few months, and whose later studies took place in accordance with the provisions of this legislation and this in an establishment subject to school inspection. Even in a case of this kind, where it is not reasonably possible to speak of an evasion of the law, the legal provisions complained of would prevent the award of a certificate admissible for homologation.

Such a result, to the extent to which it may follow from the application of the law, must cause serious doubts as to its compatibility with the right to education - the enjoyment of which the Convention and the Protocol secure to everyone without any discrimination.

In the present case, however, it has been neither established nor even alleged that there is such a result with respect to any one of the children of the Applicants.

The examination of the case thus envisaged does not prevent the Court from concluding that the legal provisions referred to in the sixth question are not, in themselves, in contradiction with the requirements of the Convention.

FOR THESE REASONS, THE COURT,

1. Holds, by eight votes to seven, that Section 7 (3) of the Act of 2nd August 1963 does not comply with the requirements of Article 14 of the Convention read in conjunction with the first sentence of Article 2 of the Protocol (art. 14+P1-2), in so far as it prevents certain children, solely on the basis of the residence of their parents, from having access to the French-language schools existing in the six communes on the periphery of Brussels invested with a special status, of which Kraainem is one;

Reserves for the Applicants concerned the right, should the occasion arise, to apply for just satisfaction in regard to this particular point;

2. Holds, unanimously, with regard to the other points at issue, that there has been and there is no breach of any of the Articles of the Convention (art. 8, art. 14) and the Protocol (P1-2) invoked by the Applicants.

Done in French and in English, the French text being authentic, at the Human Rights Building, Strasbourg, this twenty-third day of July, one thousand nine hundred and sixty-eight.

R. CASSIN
President

H. GOLSONG
Registrar

MM. A. Holmbäck, G. Maridakis, E. Rodenbourg, A. Ross, T. Wold, G. Wiarda and A. Mast, Judges, considering that Section 7 (3) of the Act of 2nd August 1963 respects the Convention and the Protocol (cf. point I of the operative provisions of the judgment), avail themselves of the right under the terms of Article 51 (2) (art. 51-2) of the Convention and Rule 50 (2) of the Rules of Court: MM. Holmbäck, Rodenbourg, Ross, Wiarda and Mast, Judges, attach to the judgment the statement of their collective dissenting opinion: MM. Maridakis and Wold attach thereto the statement of their individual dissenting opinions.

In addition, MM. G. Maridakis and T. Wold, Judges, while concurring with point 2 of the operative provisions of the judgment, which concerns the other questions referred to the Court, attach to the judgment the statement of their individual opinions, basing themselves on reasoning different from that of the majority.

R. C.
H. G.

COLLECTIVE DISSENTING OPINION OF JUDGES HOLMBÄCK, RODENBOURG, ROSS, WIARDA AND MAST

(Point I of the operative provisions of the judgment)

(Translation)

The legal and administrative measures governing access to the education given in French in the six communes "with special facilities", are not incompatible with the first sentence of Article 2 of the Protocol read in conjunction with Article 14 (art. 14+P1-2) of the Convention. This opinion follows from a logical application of the principles formulated by the Court, in particular, in the general part of the judgment (interpretation adopted by the Court), and in the reasons for the decision reached by it concerning the first question. Those holding the present opinion consider that the reply which the Court, by a majority of one, has given to the second limb of the fifth question is difficult to reconcile with a rational interpretation of these principles. The general part of the judgment states the following principles:

"... Article 14 (art. 14) (of the Convention) does not forbid every difference in treatment in the exercise of the rights and freedoms recognised ... One would, in effect, be led to judge as contrary to the Convention every one of the many legal or administrative provisions which do not secure to everyone complete equality of treatment in the enjoyment of the rights and freedoms recognised. The competent national authorities are frequently confronted with situations and problems which, on account of differences inherent therein, call for different legal solutions; however certain legal inequalities tend only to correct factual inequalities". The judgment holds that the effect of Article 14 read in conjunction with Article 2 (art. 14+P1-2) is not to guarantee to children or their parents the right to education conducted in the language of their choice since, where the Contracting Parties wished to secure to everyone within their jurisdiction, specific rights in the field of the use of a language or of its understanding, they made this clear in the text, as in Articles 5 (2) and 6 (3) (a) (art. 5-2, art. 6-3-a) of the Convention. The judgment then states, in its general part, when the distinction in treatment is contrary to Article 14 (art. 14).

It lays down the following rules:

(1) The distinction must pursue a legitimate aim.

(2) The distinction may not lack an "objective justification".

(3) Article 14 (art. 14) is violated when it "is clearly established" that there is no reasonable relationship of proportionality between the means employed and the aim sought to be realised.

(4) The existence of this reasonable relationship must be appreciated in the knowledge of the "legal and factual features which characterise the life of the society in the State which is to answer for the measure in dispute".

(5) The Court cannot, in the exercise of this power of appreciation, "assume the role of the competent national authorities, for it would thereby lose sight of the subsidiary nature of the international machinery of collective enforcement established by the Convention". It follows from this that "the national authorities remain free to choose the measures which they consider appropriate in those matters which are governed by the Convention" and that "review by the Court concerns only the conformity of these measures with the requirements of the Convention".

Those holding the dissenting opinion here stated do not contest the well-foundedness of these five principles, but they consider that there is a discrepancy between the legal premises established by the Court and the reply given to the second limb of the fifth question.

They consider:

I. That the distinction in treatment attacked pursues a legitimate aim;

II. That the measures attacked are based on objective features which justify them;

III. That the absence of a reasonable relationship of proportionality between the means employed and the aim sought to be realised is not established and certainly is not clearly established; that with regard to the reply given to the second limb of the fifth question, the judgment has not sufficiently taken account of the rule according to which the national authorities, who are in the first place those who must appreciate the requirements implied by the factual and legal features in issue, remain free to choose the measures which they consider appropriate in those matters which are governed by the Convention.

I. The distinction in treatment attacked pursues a legitimate aim

In excluding from the benefit of education given in French the children whose parents live in the Dutch unilingual region near the communes "with special facilities", the legislator was anxious to ensure the linguistic homogeneity of the two communities which would, in his view, be threatened by an extension of an exceptional system beyond the territory of the six communes. The conception of the Acts of 30th July and 2nd August 1963, which were voted by a very large majority of Fleming, Walloon and Brussels parliamentarians, was that this homogeneity is the very condition of a lasting accord between the communities.

This way of looking at things is open to discussion and was discussed at great length in the Belgian Parliament, but there is no reason to believe that

the objective pursued in this case by the laws attacked is contrary to the letter or the spirit of the Convention.

Besides, the Court in its reply to the first question has affirmed that the purpose of the "legal measures which have been attacked ... is to achieve linguistic unity within the two large regions of Belgium in which a large majority of the population speaks only one of the two national languages" and that "in other words (the legislation) tends to prevent, in the Dutch unilingual region, the establishment or maintenance of schools which teach only in French".

The Court holds that "such a measure cannot be considered arbitrary", that "to begin with it is based on the objective element which the region constitutes" and that "it is based on a public interest, namely to ensure that all schools dependent on the State and existing in a unilingual region, conduct their teaching in the language which is essentially that of the region".

II. The distinction in treatment challenged is based on objective

FEATURES

It may be assumed that the French-speaking persons, to whose cost the balance which a non-discriminatory measure implies is said to have been disturbed, live in communes situated in Dutch unilingual territory adjacent to the communes "with special facilities". Their system is that of all the French-speaking persons living in that part of Belgium.

The alleged lack of objectivity constituting a discrimination is based on an ambiguity in the appreciation of the situation in which they are placed because they live in the Dutch unilingual region near to the commune "with special facilities".

One is moved by the fact that they must, if they wish their children to be educated in French, send them to a school in Brussels which is further from their home than the French-language school in the commune "with special facilities" near to where they live.

To deduce from this that the imposition upon them of this difficulty or inconvenience amounts to a discrimination, is to misunderstand the significance of that objective factor which is the frontier which separates the communes with special facilities from the Dutch unilingual communes.

This frontier is an objective and necessary factor, inherent in the nature of the relationship between the system of common law and that which constitutes an exception to it.

Any derogation from a system of common law, whatever it may be, has by its very nature effects which may seem arbitrary but which are only apparently so. The minor has full capacity only on the day on which he attains his majority; he does not have it the day before. It would however be

ill-considered to condemn as arbitrary, for this reason, the law which fixes the age of majority at 21 years. The same reasoning holds good in the case referred to the Court by the second limb of the fifth question.

The Belgian legislator was not obliged to accord to the six communes "with special facilities", situated in unilingual territory, an exceptional system establishing certain modifications of a practical nature to the principle of territoriality. This he has done but, in so doing, he expressly affirmed that in the six communes, he did not intend to renounce the principle of territoriality. Section 7 (3) of the Act of 2nd August 1963, which is conclusive on this point, says, in its preliminary provisions, that as regards the question of schools in the six communes the language of instruction shall be Dutch.

In a similar spirit, Section 7 (4) of the Act of 2nd August 1963 (paragraph relating to the administrative system in general of the communes "with special facilities"), provides as follows: "In their relations with the local services set up in the six communes with which this Article is concerned, the central services, the regional services on which the said local services depend, as well as the local and regional services of the Dutch language region shall employ the Dutch language".

The reply given to the second limb of the fifth question does not mention the text of paragraph 4 and does not accord to paragraph 3 its proper scope. This scope is considerable since it concerns, essentially, the linguistic system relating to education. It is true, as the judgment holds, that the legislator has derogated from the principle of territoriality with regard to the six communes; it is also true that the six communes constitute "a distinct administrative district" and that they are allotted a "special status"; likewise it is true, under the terms of Section 7 (2), that the local services set up in these communes draft both in Dutch and in French, the communications and forms to be sent to the public. But paragraphs 3 and 4 cited above imply that as regards education just as much as administration, the linguistic system of the common law of the localities in question, is the Dutch system. Thus the premises, from which the reply given to the second limb of the fifth question follows, are all the more open to question as the scope of paragraphs 3 and 4 is conclusive.

The legislator who, it must be reiterated, may grant derogations from the principle of territoriality but who is not bound to do so, has, regard being had to the Convention, the right to determine the precise limits within which he intends to confine the extent of the derogation granted. In this case, he has decided that these limits should be those, which are eminently objective, of the territory of the six communes.

A system which derogates from the common law is by its very nature limited in its effects. That those who do not fulfil the objective conditions required (because they live outside the territory provided for) are in certain

respects treated differently from those who do fulfil them (because they do live in that territory), in no way therefore constitutes a discrimination.

Article 14 (art. 14) is furthermore not violated because the residence condition only applies with respect to one of the two linguistic groups.

It is true that "the Dutch-speaking children resident in the French unilingual region, which incidentally is very near, have access to Dutch-language schools in the six communes, whereas French-speaking children living in the Dutch unilingual region are refused access to French-language schools in those same communes", but this difference in treatment is not arbitrary. It is justified on objective grounds. Firstly, by the legitimate aim which the legislator has pursued, to wit, to ensure the linguistic homogeneity of the communities.

Furthermore, and above all, it is justified because the Dutch-language schools are, in the six communes, the common law schools and because in the two regions, the characteristic of common law schools is that they are open to all.

Lastly, in establishing in Flemish territory French-language schools which depend on an exceptional system, the legislator has left unchanged the common law system of Dutch-language schools in Flemish territory.

Thus, the difference in treatment which is wrongly denounced as a discrimination is the inevitable consequence of the fact that the legislator - as was his right - intended to limit the effects of the exception which he permitted to the principle of territoriality only to the children of families whose head lives in the communes "with special facilities", and the limits to common law were permitted on the basis of this paramount objective factor, which the residence of the head of the family constitutes.

Consequently it is evident that only the conditions of access to French-language schools allowed in these communes are of importance. That Dutch-speaking children from the Dutch unilingual region are granted access to the Dutch-language classes in the six communes is irrelevant, for the attendance of Dutch-speaking children at schools which provide an education in Dutch does not affect the extent of the exception made to the principle that Dutch is, under common law, the language of instruction in the communes "with special facilities".

Besides, the theoretical character of the factors on which the alleged discrimination is based may be pointed out.

No reason of a linguistic nature can impel Dutch-speaking parents living in the Dutch-language part of the country, or French-speaking parents living in the French part of the country, to send their children to Dutch or French language schools in the six communes since they find the school of the linguistic system of their choice on the spot.

As for the Dutch-speaking parents living in the communes under the French system near to the linguistic frontier, the access which their children

have to the Dutch-language schools in the six communes, poses no question of discrimination since they are only claiming to use the common law educational system and not, like the French-speaking parents living in the Dutch part of the country, the advantage of an exceptional system.

It must therefore be concluded that the distinction in treatment attacked is in no way discriminatory.

III. The applications must, as regards the second limb of the fifth question, be rejected by the application of the principles governing the theory of the proportionality, the appreciation of the factual and legal features and the subsidiary character of the Court's mission

In that part of the judgment devoted to the general interpretation adopted by the Court, it is stated as a principle that Article 14 (art. 14) of the Convention is violated only when it is clearly established that no relationship of proportionality exists between the means employed and the aim sought to be realised. It would not therefore be enough - supposing that such were the position - to be confronted with a marginal case, to conclude that there is a violation of human rights in the case of the Applicants. The differentiation in treatment is not discriminatory and it has not in any way been established that the relationship of proportionality has been disregarded. The common law legislation which governs all the communes in the Dutch-language region applies to French-speaking persons resident in the Dutch unilingual communes adjacent to the six communes, and in its reply to the first question the Court stated why this legislation is contrary neither to Article 2 of the Protocol (P1-2), nor to Article 8 (art. 8) of the Convention, taken in isolation or in conjunction with Article 14 (art. 14+P1-2, art. 14+8).

The difficulties invoked by the Applicants concern the distance from the parents' place of residence of French-language schools which, unlike the schools in the six communes, are open to French-speaking children in the Dutch unilingual region.

It is a fact that these difficulties are clearly less for parents who, like the Applicants, live in the localities belonging to the Dutch unilingual system adjacent to the communes "with special facilities" of the Brussels agglomeration, than the difficulties caused to French-speaking parents who, in Dutch unilingual territory, live further or may live much further from the nearest French-language school open to their children.

Now, the Court has found that as regards these last-mentioned parents, "the measures adopted in this matter by the Belgian legislature are not so disproportionate to the requirements of the public interest which is being

pursued as to constitute a discrimination contrary to Article 14 of the Convention read in conjunction with the first sentence of Article 2 of the Protocol (art. 14+P1-2) or with Article 8 (art. 14+8) of the Convention".

Even more so, the principle of proportionality has not been violated with respect to the Applicants who live in the localities adjacent to the communes with special facilities.

To consider, for the reasons which have been refuted under II above, that those objective limits imposed by the Belgian legislator on the exception which he has allowed to the principle of territoriality are arbitrary, amounts to contesting his right to decide, regard being had to the factual and legal features characterising the present situation in Belgium, the scope of the derogation which - without being bound so to do - he has considered himself able to make from a more severe common law system, a system which the Court has recognised as not being contrary to the Convention. In so doing the Court has lost "sight of the subsidiary nature of the international machinery of collective enforcement established by the Convention".

This is why, for all the reasons stated above, in the opinion of those holding this dissenting opinion, the Applications should have been rejected as regards the second limb of the fifth question.

INDIVIDUAL OPINION, PARTLY DISSENTING (POINT I OF THE OPERATIVE PROVISIONS OF THE JUDGMENT), OF JUDGE G. MARIDAKIS

(Translation)

1. In 1830, when she gained her independence, Belgium consisted of two de facto zones, the Flemish and the Walloon. The Walloons spoke French and the Flemings Dutch.

The higher civil service spoke French. All judicial business was transacted in French. As far as education was concerned there were no special problems in the Walloon area. In the Flemish region primary education was given in Dutch, secondary education was bilingual and university education was entirely in French.

In the years 1900-1930 a "Flemish separatist movement" came into being.

Then came the 1932 legislation. This placed the two languages on an equal footing and adopted the territorialist solution. The 1932 Acts did not fix the language boundary immutably: the boundary could change as a result of the decennial language censuses. The last such census was held in 1947, and the results, which were published in 1954, showed that the Flemish were advancing demographically and the Walloons geographically.

2. Under the 1963 Acts the national territory is divided into four linguistic regions, the Flemish, French and German regions and that of the Brussels conurbation.

In the first three regions the Acts require the exclusive use of Flemish, French and German respectively.

Under the 1963 Acts, unlike those of 1932, each linguistic region has stable boundaries drawn in such a way as to give preponderance in the region to one language.

The immutability of the language boundary and territorial unilingualism are the foundations on which the 1963 Acts are based. It is clearly with the intention of strengthening these foundations that under the Acts:

(1) Transmutation classes are abolished.

(2) The Belgian State refuses in the unilingual regions to establish State schools or subsidise private schools in which instruction is given in a language other than that of the region.

(3) The State refuses to subsidise schools which give instruction in non-subsidised classes in a language other than that of the region.

(4) The State refuses to homologate leaving certificates issued by schools that do not conform to the language legislation.

(5) The State makes special arrangements for the bilingual communes on the outskirts of Brussels.

3. The Applicants are French-speaking and live in predominantly Flemish-speaking areas. They complain in effect that the Belgian State:

- does not provide any French education in the communes where they live or, in the case of Kraainem, provides it only within limits which they consider inadequate,
- withholds grants from those schools in the communes in question that do not conform with the linguistic clauses of the school legislation,
- refuses to homologate leaving certificates issued by such schools,
- denies the Applicants' children entry to the French classes existing in certain places,
- thereby obliges the Applicants either to enrol their children in a local school - which they consider contrary to their aspirations – or to send them to school either in Greater Brussels, where instruction is given in Dutch or French depending on the child's mother tongue or usual language, or in the "French-speaking region" (Wallonia). Such "scholastic emigration" is said to entail serious dangers and hardships.

The Applicants allege violations of Articles 8 and 14 (art. 8, art. 14) of the Convention and Article 2 of the Protocol (P1-2).

4. Article 2 of the Protocol (P1-2) reads:

> "No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions."

The Applicants maintain that the term "religious and philosophical convictions" covers language. Philosophical convictions are said necessarily to include, inter alia, parents' cultural and linguistic preferences, and it is considered inconceivable that a State that observes Article 2 (P1-2) should allow fathers to bring their children up in a particular religion or philosophy while denying them the choice of education in one of the national languages rather than the other.

5. In the sentence "No person shall be denied the right to education" the Contracting States intended to express a conviction common to all the peoples of Europe, namely that man, as a being gifted with reason (logos), has an innate desire for knowledge. ("All men naturally desire knowledge", Aristotle, The Metaphysics I.) Since knowledge is acquired by instruction, it necessarily follows that instruction, as a concomitant to reason, is coexistent with it and is an inalienable and intangible right of every man. ("No person shall be denied the right to education" is a directive (a legal standard or Richtliniennorm) which the State must follow "in the exercise of any functions which it assumes in relation to education and to teaching".

As man's innate desire for knowledge, and consequently for the instruction that leads to it, cannot be obstructed in any way, the Contracting States simply add that "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".

By "religious and philosophical convictions" are meant those ideas on the world in general and human society in particular that each man considers the most true in the light of the religion he professes and the philosophical theories he adopts.

Those ideas make up each man's interior life. As that life develops, it has to resort to a specific language in order to express itself, but it nevertheless exists in its own right irrespective of the idiom by which it tries to externalise itself.

On this understanding of Article 2 of the Protocol (P1-2), the 1963 Acts are in no way concerned with the content of education whatever be the language in which instruction is given – whether French or Dutch; it follows that the Acts in no way prevent parents from bringing their children up in accordance with their religious and philosophical convictions.

6. Article 8 (art. 8) of the Convention reads:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

The Applicants complain that they are obliged to send their children either to a French school in Greater Brussels or to a school in the French-speaking region and that such "scholastic emigration" entails serious dangers and hardships.

Seen from this angle the question whether or not the 1963 Acts are in accordance with Article 8 (art. 8) is a question of fact: in each particular case it will be necessary to establish the effect on private and family life of whether the French-language school is near to or far from the parents' place of residence and of the dangers of daily "scholastic emigration".

However, the question is general in nature and may be thus formulated: is the content of the Belgian Acts of 1963 contrary to Article 8 (art. 8)?

In the immutability of the language boundaries and the territorial unilingualism laid down, the Acts have more general aims designed to benefit the entire Belgian nation; they in no way affect private and family life based on ties of blood and on family traditions. Private and family life would be violated if the authorities intervened to force a person to shape that life in a way that departed from his traditions and thus from the spirit that, by virtue of blood ties, predominated in relations between parents and their children and between members of the same family in general.

But neither family traditions nor ties of blood are disturbed by the fact that, because of the immutability of the language boundary and territorial unilingualism, both of which principles were introduced in the general interest of the Belgian nation, the Applicants, as French-speaking persons resident in a region where education is given solely in Dutch, are obliged to send their children to French-language schools far from their homes.

The 1963 Acts withhold from persons attending schools where education is not in the regional language that which is granted to those who attend schools where the education is given in that language; in particular homologation and grants are denied (see No. 3 above).

But the reasons for this denial is to give effect to the principles of immutability of the language boundary and territorial unilingualism, on which Belgian legislation has placed its language policy in consideration of the general interests of the Belgians. Thus if, for reasons of the public interest of the whole of the Belgian nation, French-speaking parents are obliged to send their children to French-language schools far from their homes, this entails no dangers other than those to which schoolchildren are exposed daily in their journeys between school and home, and which can be eliminated by a little more vigilance on the part of parents.

Thus the fact that French-speaking parents feel obliged to send their children to schools in which education is given in French, i.e. in the language of the French-speaking region, is a mere inconvenience; it is not interference by the authorities with private and family life within the meaning of Article 8 (art. 8) of the Convention. Such inconvenience may be described as the price paid for a legislative measure inspired by national and social considerations (see Section 5 (2) of the Act of 30th July 1963 on the use of languages in education: "... while respecting the right of parents to send their children to a school of their choice at a reasonable distance").

7. The true meaning of Article 14 (art. 14) of the Convention becomes clear if it is added to Article 1 (art. 1), which then reads:

> "The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section 1 of this Convention and the enjoyment of the said rights and freedoms shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status".

The Belgian legislative power thought a just settlement of the violent linguistic dispute between Flemings and Walloons could be achieved if the language boundary were drawn immutably once and for all, territorial unilingualism being introduced at the same time.

They also thought that such immutability and unilingualism could never be enforced unless the restrictions mentioned under paragraph 3 were introduced.

Discrimination (distinction in the French text) contrary to Article 14 (art. 14) must be understood to mean any open or disguised discrimination introduced with the manifest intention and sole aim of escaping the State's obligations under the Convention.

In the present case the restrictions mentioned under paragraph 3 above apply in both the Flemish-speaking and the French-speaking regions. Their justification is their specific object, that of giving effect to, instead of leaving as mere words, territorial unilingualism and the immutability of the language frontier, in order to put an end to the violent dispute between Walloons and Flemings and to restore normal and calm living conditions for the entire Belgian nation.

These restrictions, especially the denial of homologation and grants, are similar in nature to the "sanctions" listed in Chapter VII, Section 50, of the (parallel) Act of 2nd August 1963 "on the use of languages in administration".

These restrictions ("sanctions"), taken collectively and individually, have the same object, which is not to leave in the air but to give reality and effect to the regional immutability and territorial unilingualism on which Belgium's linguistic policy in administration and education is based.

But if all these restrictions are of the same kind and all have the same object, i.e. the interest of the Belgian nation as a whole, and the same value, it follows that it is inconsistent to describe some as "favours" and others as "hardships" towards Walloons or Flemings. They are rather a way of adapting the law to a pre-existing de facto difference resulting from deeply rooted historical realities.

The restrictions might be described, by analogy with the provisions of Articles 8, 9, 10, 11 and 18 (art. 8, art. 9, art. 10, art. 11, art. 18) of the Convention, as "necessary measures" to ensure a normal and prosperous life in the Belgian State for the benefit of the entire Belgian nation.

Moreover, according to the general principles of interpretative technique, the various provisions of an Act form a whole. Their unity derives from the fact that they all express a single intention. Thus a single provision must not be interpreted in a way that is not in accordance with the intention behind the whole text. This is expressed in the celebrated Roman adage: "Incivile est nisi tota lege perspecta una aliqua particula ejus judicare vel respondere".

Thus any specific provision of the Belgian legislation in question conflicts with the Convention only if, following interpretation in the light of the intention behind that legislation as a whole, it conflicts with a specific provision of the Convention interpreted according to the intention behind the Convention as a whole.

According to the intention behind the Convention, in particular as manifested in Articles 8, 9, 10, 11 and 18 (art. 8, art. 9, art. 10, art. 11, art.

18) each Contracting State may, for reasons of the public interest, take the measures "necessary in a democratic society" to protect that interest as it appears from the circumstances of the case; but it may do so only to the extent that, while protecting the public interest, the State does not repudiate or appreciably limit its obligations, as laid down in the Convention, to respect the human rights safeguarded by the Convention.

In the present case the Belgian legislation, considered as a whole and in the light of its intention, has the specific object of restoring to the Belgian nation the calm and order so deeply disturbed by the language question.

Thus if, in order to achieve this object of the public interest, the Belgian legislative power thought that the measures necessary in a democratic society meant the denial of homologation, the abolition of grants, etc., those measures, being in accordance with the intention behind the legislation taken as a whole, do not conflict with the intention behind the Convention taken as a whole and thus involve no "discrimination" contrary to the Convention.

It follows from the foregoing considerations that the restrictions mentioned under No. 3 above involve no "discrimination" between French-speaking and Dutch-speaking persons as understood and prohibited by Article 14 (art. 14).

INDIVIDUAL OPINION, PARTLY DISSENTING (POINT I OF THE OPERATIVE PROVISIONS OF THE JUDGMENT), OF JUDGE TERJE WOLD

The majority of the Court has found it expedient to embark upon a discussion of "problems of a more general character" concerning the meaning and scope of Article 2 of the Protocol (P1-2) and of Articles 8 and 14 (art. 8, art. 14) of the Convention. As I disagree with the majority interpretation on important points, I find it necessary to give an individual opinion.

Article 2 of the Protocol (P1-2)

In its report the Commission (majority) basing itself both on the text of the Article (P1-2) and the preparatory works came to the conclusion that Article 2 (P1-2) "does not oblige States themselves to provide any education whatsoever" (Report, para. 375) and further "if the object of the Protocol had been to oblige States either to provide education themselves or to subsidise private education, such an obligation should have been embodied in rules, even if only approximate" (Report, para. 375). I accept this interpretation of the Commission.

The majority of the Court, who, I take it, agree with this interpretation, are, however, of the opinion that Article 2 (P1-2) has also an additional element of a positive character. Referring to the fact that Article 2 (P1-2) applies the term "right to education" and to the fact that all member States possess a general and official education system, the majority lays down that Article 2 (P1-2) guarantees "to persons subject to the jurisdiction of the Contracting Parties the right to avail themselves in principle of the means of instruction existing at a given time" (pages 34-35 of the Judgment). Thus the majority, contrary to the wording of the article, by way of interpretation insert into Article 2, first sentence (P1-2), a positive obligation. The majority goes even further in stating that the individual has also the right to recognition of the studies which he has completed.

In my opinion this is not a valid interpretation of Article 2 (P1-2).

First of all, we should remember that we are dealing with an international convention, and we must clearly distinguish between the rights guaranteed in the Convention and the rights granted the nationals of a country in accordance with its internal, national legislation. We all know that all the European countries have elaborated systems of education, which are at the disposal of their citizens in accordance with the provisions of the laws of each country. But, this access to the educational institutions is not based upon the Convention. In my opinion there is no foundation for this presumption either in the words of the Convention or in the Preparatory Works. On the contrary both the wording of the Convention and the Preparatory Works clearly show quite the opposite.

Several of the articles of the Convention apply the word "right"

- Article 9 (art. 9): Right to freedom of thought, conscience and religion; Article 10 (art. 10): Right to freedom of expression, etc. These rights obviously do not impose upon the member States any positive obligation in regard to guaranteeing the individual citizen "the right" to use for instance the existing churches which the State may own, or to use the means of expression, for instance printing works, newspapers or broadcasting, television or cinema enterprises, which the State possesses. The "right to education" has the same scope and meaning. It does not imply any positive obligation of the State.

A logical interpretation of Article 2 (P1-2) leads to the same result. First, the subject of the right to education is everyone, cf. Article 1 (art. 1). This means that every person within the jurisdiction of any of the member States which has ratified the Convention, has the same individual human right to education. This is not a right of a group or a minority. It is a subjective right of every individual regardless of nationality, race, sex, language. In consequence, it is misleading to formulate the question, which the Court in this case has to decide as a question "if the French in Flanders or the Flemish population in Wallonia have the right to claim education in their national language". All languages hold the same position in regard to the freedom to education. That is expressly said in Article 14 (art. 14). The question before the Court is therefore in fact the following: has every individual person in Belgium the right to claim education in his own national language – a Chinese, a Japanese, an American, a Portuguese? Or, if we accept the majority interpretation of the concept "right to education" as a "right to access": has every person on Belgian territory the same individual human right to access to all Belgian schools and educational institutions in the country, has a Chinese, a Japanese, an American, a Portuguese the same rights of access as the Belgian nationals themselves? Of course not. The fact that the beneficiaries of the right to education granted by the Convention are, so to say, every person on the earth, and the fact that the right is bestowed on all without distinction on any ground, must be taken seriously into consideration when deciding what the content of the "right to education" in the meaning of Article 2 (P1-2) really is. It goes almost without saying that this right cannot go further than to a freedom for the individual to choose the education he wants without interference by the State. That right belongs to everyone, and it is the same for everyone, regardless of country. This is a fundamental principle in the field of Human Rights.

That the right to education was meant as freedom of choice is also strongly upheld in the Preparatory Works. The right to education was from the very beginning listed as one of the three family rights (Preparatory work on Article 2 of the Protocol (P1-2), p. 5, document CDH (67) 2) and defined

as "prior rights of parents to choose the kind of education to be given to their children". And through the whole of the Preparatory Works, in numerous places, the right to education - by all who took part - is mentioned as a right of choice for the parents, which should be secured as a basic fundamental freedom.

The Preparatory Works also clearly show that it was not in the mind of anyone that Article 2 (P1-2) should establish a positive claim against the State. On the contrary, the basic intention was to protect the individual against interference by the State. It is this which in my view is the reality to take into consideration when interpreting Article 2 (P1-2). We must not forget that Europe, at the time when the Convention was adopted, had just gone through years of suppression of the freedom of the peoples, where governments used all sorts of means and pressure to nazify the youth, especially through the schools and youth organisations. It was an important aim of the Convention that this should not be repeated and that the freedom of education should be protected. Frequently, throughout the Preparatory Works this point is stressed.

A "right of access" to the existing educational institutions of the member States is not dealt with by the Convention and is, within the meaning of the European Convention, not a human right at all. Nobody denies that everyone may have a right of access to the schools and teaching institutions in Belgium and the European countries in accordance with the laws of each country, but this is not a right laid down in the Convention. There is in fact no foundation for the majority's view that the right to education laid down in Article 2 (P1-2) would be meaningless if it did not imply the right to be educated in the national language. Imposing a negative obligation upon the State, Article 2 (P1-2) is important and has a full meaning.

Every human right granted by the Convention must be the same in all the contracting member States. The right to education must have exactly the same content in Belgium as in Norway or in Turkey and all the other States which have ratified the Convention. Within its limited field it is just the aim of the Convention to adopt the same European system. The majority opinion contravenes this basic aim of the Convention, when it is stated that the human right to education "by its very nature calls for regulation by the State, regulation which may vary in time and place according to the needs and resources of the community and of individuals". This shows that the majority view goes outside the scope of the Convention. The human rights granted are absolute rights, which cannot be the object of regulation by the separate States except where this is expressly stated in the Convention and under the conditions the Convention itself has laid down. In regard to the right to education the Convention has no such provision. It would also be a very dangerous road to embark upon if the articles of the Convention were to be interpreted in such a way as to allow the member States to regulate the

human rights "according to the needs and resources of the community". Such an interpretation cannot be accepted. And even worse is the interpretation by the majority that the Convention "implies a just balance between the protection of the general interest of the community and the respect due to fundamental human rights". I strongly disagree with this interpretation. In my opinion it carries the Court into the very middle of the internal political questions of each Member State, which it has never been the intention that the Court should deal with.

Finally, I would like to indicate briefly some of the practical difficulties the majority interpretation leads to.

Shall everyone be secured the "right" of access to all the institutions of instruction in the member States, primary and secondary schools, universities, etc? What will happen to this individual right of access when there is not room for all? In many countries there are not even sufficient facilities for their own nationals. This shows that if it really had been the meaning to introduce a positive obligation on the Contracting Parties, there necessarily must have been adopted some rules of regulation and limitation. Further, these rules must have been the same for all Parties to the Convention. But such rules were not even discussed. The reason is simple. The scholastic system of the member States is the internal, national concern of each of them: it is entirely outside the scope of the Convention. It was also during the Preparatory Works expressly pointed out that the Convention should not affect the internal scholastic organisation of States. This case also shows how meaningless it would be if the European Court, referring only to Article 2 (P1-2) in its present form, should have competence to interfere with the organisation of the scholastic system of Belgium, which was adopted by the Belgian Parliament by a large majority of all groups of the country. The only question which can be reasonably discussed with regard to the Belgian laws is if they are so strict or so rigorous that they imply a denial of the free choice of education. But this has not even been claimed.

All this makes it, in my opinion, evidently clear that the positive interpretation adopted by the majority is not well grounded. The negative interpretation adopted by the Commission is both logical and consistent with the wording of Article 2 (P1-2).

Article 14 (art. 14) of the Convention

Article 14 (art. 14) cannot be applied in our case. That follows already from the fact that, in my opinion, there has been no denial of the right to education by the Belgian State. I have no objection to considering Article 14 (art. 14) as a part of each of the foregoing Articles of the Convention and the Articles of the Protocol. But that brings no new element into the discussion, it only makes it evidently clear that the human right dealt with in

each Article shall be secured without discrimination for instance on the ground of language.

I also agree that the object of Article 2 and Article 14 (art. 14+P1-2) read in conjunction is to ensure that the right to education shall be secured by each Member State without discrimination on the ground of language. But still the question remains - what is the content of the right to education? In that respect I refer to what I have said in regard to the interpretation of Article 2 (P1-2).

The majority of the Court maintains that it is possible to visualise a measure which, while in itself in conformity with the requirements of a certain article of the Convention, nevertheless infringes the same article because it is of a discriminatory nature. In my opinion, this method of interpretation is both illogical and confusing. If a measure infringes a human right because it is of a discriminatory nature, the reason always will be that the measure in question is not in conformity with the Article, and in itself contains a violation. I shall not go into details on this point, I only want to state that I cannot see that the construction introduced by the majority in any way casts any light on the problem before us. The question will always be the same and only one: Is there a violation of a certain article of the Convention? But, in deciding this question the Court may have to decide if a discrimination has taken place. This is the simple solution of the relation between Article 14 (art. 14) and the other articles of the Convention.

Neither are the examples mentioned by the majority of the Court especially convincing. For instance, if a State takes discriminatory measures in laying down entrance requirements to educational establishments, this constitutes no violation of the Convention if a right of access to the educational establishment in question is not laid down as an individual right in the Convention (cf. Article 1) (art. 1). The same applies to the example regarding the application of Article 6 (art. 6) which the majority has cited.

The question if a discrimination has taken place must be decided on the concrete facts in every individual case. It is almost impossible to lay down general principles. The majority has, however, tried to do so, and that makes it necessary for me to make some observations.

In all our countries we speak about the principle of equality, which we maintain shall govern our legislation; and even if this principle is not expressly laid down in words in our Constitutions, we take it as a matter of fact that it exists and can be applied. It is also not infrequently referred to.

But if the principle of legality before the law is applied within the separate States, in the entire field of the national legislation, it goes without saying that it must be applied and even more strongly or more strictly with regard to Human Rights in the limited field of the European Convention. Human Rights are, and must be, the same for everyone, and if we allow

derogation in this field, we very soon run the risk of destroying the guarantees which the Convention secures to the individual.

It is true that the competent national authorities are frequently confronted with situations and problems which call for different legal solutions. But this fact has no relevance when we are interpreting the content of the different concepts of Human Rights in the Convention. We cannot have different concepts of Human Rights in the different member States. That applies also to all the other concepts of the Convention. It applies to the concept of "discrimination" and even for instance to the concept of the legal standard "reasonable" in Article 5 (3) (art. 5-3). It follows that the concept of "discrimination" must be interpreted in the same way for all European States. We must find a "European" interpretation. It is for the Court after having interpreted the concept of discrimination in the Convention then to decide if in the concrete case a discrimination has taken place. This decision must be based on an evaluation of the facts and circumstances of each separate case. It is of little help in this context to refer to "the principles which normally prevail in democratic societies" or to "reasonable relationship of proportionality" between means and aims. The decisive factor must always be the content of the Human Right in question. This right everyone shall enjoy in full "without discrimination on any ground". For the evaluation of the question if in the concrete case a discrimination has taken place, no general rules can be laid down. In the field of Human Rights laid down in the Convention, in my opinion, it would in any case be wrong if the Court should embark upon a discussion of the needs and the resources of the different member States.

The only deviation from the Convention allowed is laid down in the Convention itself, and I think we should keep strictly within the field of these exceptions not generally laid down, but attached to each separate Article.

In regard to the interpretation of the second sentence of Article 2 of the Protocol (P1-2) and Article 8 (1) (art. 8-1) of the Convention, I agree with the majority opinion.

It follows from what I have said that I have come to the conclusion that in the case before us there is no violation by the Belgian State of any Human Right secured by the European Convention. The Belgian educational laws do not contravene the provisions of the Convention, and it is for me not necessary to embark upon a discussion of the details of the case, which in my view are of a more or less internal political character and fall within the exclusive sovereignty of the Belgian State.