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## Article

# Non-Confessional RE in Denmark and Rights to Exemption: A Study-of Religions cum Human Rights Perspective

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**Abstract:** Danish elementary school Religious Education (RE) dates back to the beginning of the Danish public schools in 1814 and remained confessional until 1975. In 1937, an option for exemption for teachers and pupils was introduced. However, the non-confessionalisation of the school subject did not indicate that the exemption was removed. At present, pupils (excluding teachers) may still be exempted. In this study, the authors examine the current situation of the subject, the exemption rules, and related human rights aspects. We analyse the contents and aims of RE, the exemption regulations and the related political, public and educational debates on the option for exemption. The analyses and discussions cover a few key non-Danish and Danish articles and discussions from a human rights and an educational perspective of RE and human rights in Europe. The articles are particularly related to the freedom of religion or belief and include discussions on the requirements for RE to be compulsory and thus have no ‘opt-out’ option for pupils and parents.

**Keywords:** religious education; Danish religious education; study of religion; study of religion-based education; opt-out rights; human rights; freedom of religion or belief; European Court of Human Rights; European Convention of Human Rights



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## 1. Introduction

On the back cover of one of the most important European publications on RE in the various European nation states, it says:

Many European societies are characterized by increasing forms of secularisation and religious diversity. This results in a paradigm shift with regard to religious education. For a long time, the main aim of religious education was, clearly, to educate children in their own religious tradition. Today, the aims of religious education are much broader: contributing to pupil’s general education (Allgemeinbildung) and preparing them for participation as a citizen in the future, multicultural society. As a result, the following question arises in many countries: how can ‘teaching into religion’ be transformed into or complemented by ‘learning about’ and ‘learning from (the study) of religions’? (Franken and Loobuyck 2011)

The question mentioned in the quote has been raised in various European nation-states at different times. In some places already back in the 1960s and in other places much later. The question, however, has not been answered in full and to everybody’s satisfaction. A key issue is this: what are the requirements in order for RE to be compulsory, that is, a school subject that the state and school authorities can have all pupils attend as a normal school subject—with no special rules that make exemption possible, with no ‘opt out’ possibilities? From a cluster of (landmark) cases brought before the European Court of Human Rights (ECtHR), RE scholars and human rights scholars have discerned some kind of paradigm (or parameter) for a compulsory RE, which is in line with and balances key human rights, including rights (and plights) of the state, rights of the child and rights of the parents.

One of the foremost and most famous criteria (see ahead for references) for making RE compulsory is that it is conceived (in executive orders) and taught (by RE teachers and in RE textbooks) in an ‘objective, critical and pluralistic’ manner. However, conceiving and implementing such a school subject is challenging for many countries due to various reasons. One such reason is that some governments, urged by religious authorities and by (neo-)nationalist politicians as well as identity politics in general, actually do not want to have such non-confessional RE that requires meeting the criteria.

When discussing the paradigmatic case *Folgerö and Others v. Norway* (ECtHR 2007a) and thus the developments regarding RE in elementary schools in Norway (cf. Alberts 2011; Andreassen 2013, 2014; Relano 2009; Slotte 2011), the ECtHR and scholars dealing with the case concede that the Norwegian state preferred to have such an RE and tried to balance various interests. On the one hand, a substantial focus on the majority religion was seen as fundamental to the cultural heritage of the country, and to upholding current ‘common values’ and social cohesion. On the other hand, the state, the school and the school subject were also obliged to contribute to a pluralistic democracy that acknowledges respect for the freedom of individuals, including freedom of religion.

This balancing ‘act’ proved to be more difficult than expected. The compulsory (integrative) RE introduced in Norway in 1997, namely *Kristendomskunnskap med religions-og livssynsorientering* (‘Knowledge of Christianity with an orientation about religions and views of life’) and its related rules for (rights to) exemption, did not satisfy everybody in Norway. Former rights to be fully exempted were abolished, and a rule for partial exemption from those parts of teaching that could be seen as a religious practice was implemented.

In 2004, in response to a complaint filed (*Leirvåg and Others v. Norway*) (Human Rights Committee of the United Nations 2004) the UN Human Rights Committee, responded that KRL did not meet the human rights standards and that the exemption rules were unsatisfactory. Subsequently, in 2007, a more weighty judgment was passed by the ECtHR (*Folgerö and Others v. Norway*), despite certain changes made by the Norwegian government. Though with a narrow majority, the ECtHR adjudged that the framework of KRL in Norway constituted a violation of the European Convention of Human Rights, particularly Article 2 of Protocol No. 1. Thus, the Norwegian state revised RE again. Still, study-of-religions based RE-scholars, such as Alberts and Andreassen, have not been convinced that the revised subject adheres to the human rights criteria, that is RE should be sufficiently objective, critical and pluralistic. Moreover, from the perspective of the executive orders (core curriculum) for the Norwegian school and education, RE is considered biased and favours Christianity not only quantitatively but also qualitatively (Andreassen 2013, 2014).

The legal and human rights parameters for a compulsory integrative RE will be examined when we evaluate and discuss the rule of exemption in Denmark. If politicians in Denmark would pursue a compulsory RE in public elementary schools with no full or partial opt-out possibility, then would the necessary changes, if any, avoid ‘defeat’ as experienced in Norway if complaints were filed to the ECtHR? When answering this question, the above-mentioned landmark case (*Folgerö and Others v. Norway* case) should be considered as well as other related cases (*Leirvåg and Others v. Norway* also *Busk Madsen and Pedersen v. Denmark* (ECtHR 1976) and *Hasan and Eylem Zengin v. Turkey* (ECtHR 2007b)). Nevertheless, we shall also examine other judgments of the ECtHR regarding compulsory (religious) education, freedom of religion and the rights of parents following Article 2 of Protocol No. 1. Moreover, we shall briefly mention *Lautsi and Ors v. Italy* (ECtHR 2011) and a 2017 judgment where the ECtHR opposes parents who demanded exemption from compulsory swimming lessons for their children in a Swiss school (*Osmanoglu and Kocabas v. Switzerland* (ECtHR 2017)). Then, we shall relate our discussion to earlier (1999, 2000 and thereafter) ‘judgments’ made by the authors regarding the degree to which Danish RE in elementary schools complies or does not with the human rights standards (the legal parameter for compulsory RE). We shall also include two analyses and discussions by Danish human rights scholars on the matter: from 1992 and 2018. The 2018

analysis is from the same year the current executive orders for RE in elementary school were introduced.

## 2. Religious and Cultural Context and Organisation of Schools in Denmark

The 1949 (1953) Danish Constitution guarantees freedom of religion (§§ 67, 68, 69, 70) but not equality. § 4 (1953) states: 'The Evangelical Lutheran Church shall be the Established Church of Denmark, and as such shall be supported by the State' (Folketinget 2013, official translation). In other words, the established church called 'Folkekirken' ('The People's Church') has certain privileges, inter alia by way of the state having a Ministry of Ecclesiastical Affairs and with regard to the state contribution to its finances. Whether the support of the state implies more than that, and if so, what that may be, is a matter for discussion. Historically, particular politicians and Christian organisations have used this paragraph as an argument for ascribing Christianity a special status in schools and RE. However, the paragraph has not had direct legal consequences on how religion(s) is taught in public schools, and there is nothing elsewhere in the Constitution about RE.

Denmark has traditionally been a highly homogenous country regarding ethnic, cultural and religious components, with the majority of the citizens as paying and full members of the established state-supported religion. However, a gradual development towards more cultural and religious pluralism can be observed over the past 40 years. Immigrants and their descendants now constitute 14.4% of the total population of 5.8 million (9.2% from non-Western countries). Most non-Western immigrants are concentrated in the Copenhagen metropolitan area (20%) and other bigger cities. In certain municipalities, up to 41% of the population is constituted by immigrants and their descendants. However, in other municipalities, they constitute as low as 6% (Danmarks Statistik 2021), which affects the schools including RE. Though the majority of the population (74.3%) is still paying members of the Evangelical Lutheran Church, the number of members has declined steadily over the past 30–40 years.

The exact numbers of people adhering to various non-Christian religions and Christian denominations different from the established church are difficult to determine. Qualified research indicates that approximately 250,000–300,000 people are Muslims (i.e., statistically, Muslims refer to people with a family relation to several countries where Islam is the majority religion), whereas approximately 35,000, 23,000 and 5000–6000 people are Buddhists, Hindus and Jews, respectively. In sum, adherents to other religious (and other Christian) communities than the established church constitute a relatively small part of the total population (Center for Samtidsreligion 2021), though their number has increased significantly over the past 40–50 years. Regarding RE, to the best of our knowledge, none of the institutionalised groups of non-Christian or other-Christian citizens in Denmark has engaged in public and political debates on RE. No specific demands or complaints have been (at least formally) raised.

RE dates back to the beginning of the Danish elementary and lower secondary school in 1814. The subject was confessional until 1975. RE today is called *Kristendomskundskab* ('Knowledge of Christianity'). It is (in principle) a non-confessional and compulsory and 'integrative' (Alberts' term, cf. Alberts 2007) subject in grades 1–9 in elementary and lower secondary public schools ('Folkeskolen'). Since 2006, it has been part of a group of subjects with exams. RE is also compulsory in two upper secondary school programmes, namely the Gymnasium and its counterpart called the Higher Preparatory Examination ('HF'). Here, RE is simply called Religion and has long been a regular subject with exams and grades. Religion was introduced in the Gymnasium in 1877 as a non-confessional subject and was called *Kristendomskundskab* ('Knowledge of Christianity') in 1967 (since 1974: 'Religion'), came into HF. For more than a century, RE in the Gymnasium was closely connected to the university-based academic, scientific study of religions, whereas primary school RE has been dominated by theology and theological–pedagogical approaches. The significantly different profiles of RE are also reflected in the removal of its opt-out possibility in 1995

in the Gymnasium and HF despite its existence in the elementary and lower secondary schools (UVM 1993).

In addition to public schools, Denmark has a parallel system of ‘independent’ private schools (‘friskoler’) and continuation schools for grades 9–10 pupils (‘efterskoler’). The country has approximately 220 efterskoler and 550 friskoler (18% of the total pupils), most of which receive substantial financial support from the state. A few of them are based on religious ideologies and aim at combining general education with education about the parents’ religion. Most religious private schools are Christian (22 Catholic and 34 Lutheran–Protestant), though approximately 24 are Muslim private schools. Independent private schools are regulated by a law on free private schools and are under the inspectorate of the state. If the schools follow the law and ensure that their teaching approach meets that of public schools, then they can offer teaching following their convictions and beliefs. However, they shall prepare pupils to live in a society characterised by freedom and democracy and strengthen their knowledge of and respect for the basic rights of freedom and human rights, including gender equality (UVM 2021a). Many of these schools prepare pupils for the same final exams as those in the Folkeskole, though they may opt not to offer exams in Kristendomskundskab and other subjects. Therefore, although most subjects taught in independent private schools have to adhere to the national curricula as do the same subjects in public schools. Information on how RE is taught in, for example, Christian private schools, is difficult to find. At most Muslim private schools, RE is timetabled as Religionskundskab (‘Knowledge of Religion’) but is to be characterised as confessional instruction in Islam (Ihle 2007, p. 53).

### 3. The Opt-Out Possibility in Elementary and Lower-Secondary School: A Historical Perspective

Due to various historical and cultural arguments, Christianity (especially Evangelical Lutheran Christianity) has (had) a special status in RE in elementary and lower secondary schools. Such arguments particularly centre on the idea of Evangelical Lutheran Christianity as a highly important and key constitutive aspect of a so-called ‘Danish culture and heritage’ (also called ‘European/Danish foundational values’). This privileged position is also made explicit in the General Education Act in which RE has special paragraphs. In addition to the opt-out possibility, the paragraphs also state that the subject should not be taught to grades 6–7 pupils (when most pupils follow out-of-school religious instruction in preparation for confirmation), that the core field of knowledge must be the key concepts of the established (Evangelical Lutheran) church and that ‘other religions and views of life’ (Danish: ‘livsanskuelser’) are to be included and taught to grades 7–9 pupils (UVM 2021b, § 5; 6). Although the special status of Christianity is often claimed as related to quantitative difference, research demonstrates that biblical stories and Evangelical Lutheran Christianity are represented and approached qualitatively differently from other religions and world-views. For example, content is framed in (theological) existential and life–philosophical perspectives centred on (postulated) existential and foundational values and interpretations of life. Pupils can learn (and should) from such values and interpretations relative to their personal existential–ethical and social–ethical formation and development (Jensen and Kjeldsen 2013; Kjeldsen 2016, 2019).

The opt-out possibility for teachers and pupils was introduced in 1937 with the new Education Act for public elementary schools. For the first time, Christianity became formally separated from the overall aim of the school, although it still existed. The paragraph also stated that RE (‘Kristendomsundervisning’) should be aligned with the teachings of the established church (UVM 1937, §1). The opt-out possibility read:

The parents of a child who belongs to ‘Folkekirken’ (the established church), can, at the beginning of a school year, request in writing to the school commission that they want to take care of the teaching of Christianity themselves. The child can be exempted if one of the ministers of the established church declares that he/she is willing to supervise the teaching.

As for children who do not belong to the established church, they may, if the parents demand so, be exempted from the teaching, and if the supervision of their religious upbringing is managed by the religious community that the child belongs to, if any. The parents, however, have the responsibility that the child, regardless of whether or not he/she belongs to another religious community, will not lack information about the common rules of life in a well-ordered society. If the child is neglected in this regard, the school must provide the teaching. (UVM 1937, § 52, authors' translation)

The teachers could also apply the School Commission to be exempted to teach the subject. However if the school could not find other teachers to take over, it was the teacher in question who should pay the fee if a person from outside was to be hired. (UVM 1937, § 53)

Accordingly, the teaching of Christianity is seen as decisive for the social-ethical formation of the child so that it learns about the 'common rules for the life in a well-ordered society'. The Education Act with the introduction of the opt-out possibility in 1937 can be seen as a compromise between two factions of politicians, scholars and organisations. One faction argues that the entire school and overall formation (Allgemeinbildung) of pupils should not be based on Christianity and that RE should be based on up-to-date historical-critical biblical research and should be knowledge-based. The other faction, however, aiming to maintain the Christian foundation for the entire school and the 'preaching-aspect' of RE, evidently got the upper hand, a fact evidenced in the supplementary Education Acts of 1941 and 1942. Regarding RE, their overall aim was to 'develop the religious predisposition of the children and let them see the value of Christianity for the life of humans' (UVM 1942, p. 21). Additionally, the overall aim for the entire school (still) was to 'develop and strengthen the sense of the children for the ethical and Christian values' (UVM 1942). As the opt-out possibility only applied to RE and not the whole school, another paragraph stated that if the school's teaching results in conflict with the consciousness of parents and children belonging to other religious communities, school authorities are allowed to deviate from the law (UVM 1937, § 54). The purpose of this statement was not further elaborated.

In 1975, public schools and public-school RE became officially non-confessional. Before and after the 1975 Education Act, many heated political, professional and public debates were conducted, not least with regard to indoctrination in schools. Though indoctrination was discussed primarily with regard to the fear of teachers indoctrinating the pupils with a Marxist ideology (Reeh 2016), RE and the opt-out possibility were also discussed. A ministerial committee had suggested that the subject should be (re-)named 'Religion', should be non-confessional, based on historical-critical approaches and should include 'other religions and views of life'. Limitations to the opt-out possibility were also suggested (UVM 1971). In response, churchly organisations mobilised a petition against the proposal and established an organisation aimed at helping parents start new Christian free schools. Furthermore, a newly established political party Kristeligt Folkeparti ('Christian People's Party') gained political influence that countered the proposal. Finally, RE was renamed 'Knowledge of Christianity' and timetabled with 1–2 h in grades 1–9. 'Other religions and worldviews' was introduced as a non-tabled topic to be included in some other subjects, and a paragraph stated that the key contents of 'Knowledge of Christianity' should continue to be the teachings of the Evangelical-Lutheran Christianity of the established church. At the same time, an explanatory note to the Education Act stated, that this formulation ensures that the teaching is not explicitly religious preaching and indoctrination (Kjær 1999, p. 41). However, politicians maintained the opt-out possibility, though with certain amendments. The possibility was expanded to include all parents and pupils, not just those belonging to other non-Christian religious communities or to a Christian denomination different from that of the established church. The requirement of a churchly or other official religious supervision and control of the alternative teaching was also removed. The opt-out possibility read:

A child may be exempted from Kristendomskundskab classes following a written request by the person with custody of the child on the condition that the custodian also declares to the headmaster to supervise to the religious education of the child. If the child is 15 years old, the exemption can be granted only with the consent of the child. (UVM 1975, § 5, 2, authors' translation)

The decision of a teacher to use his/her (as the law reads) opt-out possibility might have economic consequences. The salary would be reduced if s/he could not attain full-time teaching due to this exemption (UVM 1975, § 31). Thus, the opt-out possibility was maintained partly due to public pressure and partly due to the general principles of freedom of choice and religious freedom. However, the opt-out possibility gains relevance when examining the 1975 National Curriculum (and the guidelines for the new 'Knowledge of Christianity' subject) from a study-of-religions as well as human-rights perspective. Although the subject's aim explicitly frames it as non-confessional, the curriculum and guidelines demonstrate that it must be classified as an existential-theological based 'small-c-confessional' RE. Thus, regular teaching, formally separated from religious confessional teaching, is continuously based on a religious (Christian) approach to religion with an implicit or explicit aim to promote religious (Christian) values and contribute to the existential-ethical and social-ethical formation of the pupils (Jensen and Kjeldsen 2013, p. 195).

Whereas the opt-out possibility for teachers was removed in 2017, the one for pupils has continued to be part of the Education Act. The present opt-out possibility (UVM 2021b) reads:

A child may be exempted from the Kristendomskundskab classes following a written request by the person with custody of the child on the condition that the custodian also declares to the headmaster to supervise the religious education of the child. The exemption can normally be granted only at the beginning of a school year. If the child is 15 years old, the exemption can be granted only with the consent of the child. The minister of education may lay down [further] rules for the procedure to be followed in the case of exemption. (UVM 2021b, §6, 2, authors' translation)

However, an annotation to the paragraph states that if a child is exempted, authorities cannot examine whether the custodian provides an alternative religious education and its requirements. Moreover, the annotation states that attaining exemption from RE during the school year is not entirely impossible because participation in RE could lead to a conflict of consciousness (UVM 2014a, § 6 note 48–49). In 2014, the Ministry issued additional rules of procedure for the use of the opt-out possibility. These procedures (which remain valid) state that before the exemption is provided, the school leader must inform the parents and the child about RE and the consequences of the exemption. This information includes (UVM 2014b) the presentation of the following points:

- RE as a compulsory, non-confessional and regular school subject,
- The contents of RE,
- The aim of RE to help pupils familiarise Danish culture and give them an understanding of other cultures,
- The relation of RE to other subjects and its relevance to the further education of children,
- No alternative teaching to RE is offered for those who opt-out.

The Ministry often does not collect information about how many pupils actually use the opt-out possibility. In 2006, the Ministry conducted its latest random sampling among 99 schools and showed that 1.3% of the pupils (from 41 schools) used the exemption rule. The percentages in the majority of these schools were 0.5–2%, however at one particular school 70% of the pupils were exempted. This random sample (which is now outdated) indicates that most schools in Denmark have no or very few pupils who do not attend RE. Additionally, certain schools with several pupils who have another religious (and/or) cultural background face a challenge in persuading the parents, that RE is not framed as a confessional and proselyting subject. The above-mentioned procedures issued by the

Ministry are an initiative to reduce the number of exempted children—despite the fact that the number was and is relatively small.

#### 4. Recent Political Discussions: Abolishing or Not the Right to Exemption in Upper Secondary and Elementary School

##### 4.1. Elementary School

The opt-out possibility has periodically become a topic for political (and public) discussions. Since the elementary school (primary and secondary) is the main place for the state to educate and socialise the future citizens, and since the upper-secondary school in Denmark no longer has an opt-out option, the most heated and frequent debates concern RE in elementary school. In 2001 and 2002, the right-wing party Dansk Folkeparti (the ‘Danish People’s Party’) specialised in anti-immigration and anti-Muslim political agendas introduced a bill to remove the opt-out-possibility. Before introducing the actual bill, the party raised the issue in Parliament. The Parliament viewed the removal as part of an assimilation strategy socialising children of Muslim immigrants into Danish culture, history and values, which are intimately linked to Christianity (Folkeetingstidende (FT 2000–2001a)). The argument of the bill proposed in 2001 and 2002 reads:

... to understand and live in the Danish society, it is important that all pupils gain knowledge about the Christian tradition, its religious symbols and the thousand-year-old Danish history widely influenced by the Church ... it is important to understand that Christianity has a set of values that are important to know to socially interact with other people and that these values partly are reflected in our democratic system and rules. (FT 2000–2001a, Bind VIII, authors’ translation)

The proponents argued that removing the opt-out-possibility would not conflict with human rights conventions and articles on religious freedom because the subject was non-confessional and non-preaching. Several centre-to-right political parties agreed with the importance of RE’s contribution to a national–cultural Christian formation. According to Venstre (the ‘Liberal Party’), RE should ‘give the pupils the impression of the value of Christianity as the Western world’s identity-forming and culture-bearing force’ and secure that ‘pupils understand that we, in Denmark, have a common cultural and spiritual baggage, a common past that contributes to the identity of the pupils and serves as the basis for understanding other cultures’. Moreover, they viewed RE as a subject that would allow pupils to ‘discuss basic questions, such as responsibility towards others in sickness, life and death’. They considered this aspect as highly relevant to a period of rapid changes and thus to a search for identity and roots and the introduction of the pupils to philosophy (FT 2000–2001b, Bind IX, column 6192, authors’ translation).

The spokesperson of Det konservative Folkeparti (the ‘Conservative People’s Party’) introduced a similar argument:

RE shall provide pupils with knowledge about the values which have flown through the history of Europe and, in 1000 years, have dominated Danish history, structure, culture, mentality and identity. Our overall fundamental values are embedded in Christianity, and whether you like it or not, you cannot escape the fact that Denmark is a Christian country built on a Christian foundation, and we do not have, I am sorry to say, equality among religions. Christianity comes first due to the Constitution. (FT 2000–2001b, Bind IX, column 6193, authors’ translation)

He also expressed that newcomers could not understand ‘the Danes and the Danish mentality and culture’ without learning the ‘messages of Christianity’:

To have a proper course of integration, if you want a well-functioning society, it is important to know your roots, foundation and identity so we can avoid becoming free-floating individuals in a pluralistic, pragmatic time, where everyone can think what they want. Christianity is the foundation, and then people can choose what religion they prefer. (FT 2000–2001b, Bind IX, column 6193, authors’ translation)



The spokesperson of the Christian People's Party agreed with the claimed arguments. However, they would vote against the bill with reference (and reverence) to the influential Danish theologian and politician N.F.S. Grundtvig and his notion about freedom and freedom of religion. Moreover, they feared that removing the opt-out possibility would lead to the establishment of additional Muslim private schools. They held that bringing the national guidelines (and curriculum) for RE in line with the Education Act was important and maintained that they would not vote in favour of changing the name of RE to Religion (FT 2000–2001b, Bind IX, column 6192).

The Minister of Education, from the centre-left party De Radikale Venstre ('Social Liberal Party'), also considered providing knowledge about 'how Christianity has affected our history and way of life and thinking through centuries' as an important aim of RE. Nevertheless, with reference to freedom of choice as a core Danish value, she was against the removal of the opt-out possibility. Moreover, she feared a removal may conflict with human rights norms and would increase the number of pupils choosing private (religious) schools. She highlighted Article 9.1 of the European Convention of Human Rights, particularly Article 2 of Protocol No. 1 on parents' right to raise their children based on their religion and religious and philosophical conviction. She also argued that although the opt-out possibility was not a constitutional right, many people perceived it as such, adding that '[a]lso parts of the People's Church think that the opt-out possibility should remain. Some even call it a Christian letter of freedom, where all kinds of forces [as regards religion] are removed' (FT 2000–2001b, Bind IX, column 6190, authors' translation). The spokesperson from the other government party Socialdemokratiet ('The Social Democrats') was also against the proposal. He viewed the bill as 'a crusade against everything [ . . . ] seen as being not Danish'. However, he also viewed giving room to people with another 'faith', that is the tradition of religious private schools and the opt-out possibility, as strictly Danish. He regarded the opt-out possibility as intimately linked to freedom of religion and democracy. Moreover, he also feared that removing this possibility would lead to court cases concerning human rights and that the number of Muslim pupils leaving public schools would increase. Two left-wing parties were also against the removal: they opposed the nationalistic profile of RE. According to them, RE should be renamed to 'History of Ideas' focusing on philosophical–ethical questions, including knowledge about religions (FT 2000–2001b, Bind IX, column 6191).

When the bill was renegotiated in 2002, similar arguments as before were introduced by Dansk Folkeparti. However, all the other political parties ended up voting against the bill, giving the same reasons as they had when it was debated a year earlier. Certain parties also feared that abolishing the opt-out possibility would be only the first step towards changing the name (and the contents) of RE from Kristendomskundskab to Religion.

The question about the opt-out possibility and the evident effort to use RE, especially by right-wing political parties in their wider cultural battles and strategic efforts to attract voters' attention, emerges regularly. In 2005, when the government consisted of the Liberal Party and Conservative People's Party, a former member of the latter asked the so-called § 20 questions to the Minister of Education about the opt-out possibility and its relation to the Constitution. During his many years as minister, the Minister of Education (also the Minister of Ecclesiastical Affairs) Bertel Haarder has set his mark on the overall aim of public schools, as well as on RE in elementary and upper secondary schools or the education of elementary RE teachers. Haarder has repeatedly reinforced the national-cultural Christian profile of RE successfully. In response to the § 20 questions, he made several statements about RE. He did not consider the removal of the opt-out possibility as in conflict with the Constitution (articles on freedom of religion). However, he believed that the proposal contradicts other life views and N.F.S. Grundtvig's influential idea about the school and the freedom of individuals. He also stated that 'Knowledge of Christianity' was a 'culture-bearing school subject' centred on biblical stories and, together with History and Danish (L1), '[is] the core instruments in efforts of the school to familiarise the pupils with the common foundational values of the Danish society' (Haarder 2005). In an article

written in 2006 (following the Muhammad cartoons crisis), he elaborated his arguments against removing the opt-out possibility as well as his views on RE. On the one hand, he stated that religion and politics should be separated, which is possible in Denmark because of the Lutheran reformation (as opposed to Islam with no such reformation behind it). On the other hand, he claimed that the opt-out possibility should continue to exist to:

legalize that the majority [of the pupils] carry Christianity with them into the school as something expressed by singing psalms, saying prayers, attending Christmas ceremonies and Christian symbols. In return, we must accept headscarves and Muslim symbols. Denmark shall not be a secular but a multicultural society. (Haarder 2006, p. 22, authors' translation)

His writing indicates that he referred to 'secularistic', not 'secular'. Furthermore, his statement about the multicultural society (and school) was unexpected to many observers. In other discussions about RE, he deliberately avoided acknowledging and naming Denmark as 'multicultural' (Haas 2014). In 2009, when the opt-out possibility was debated again in the Parliament, Haarder expressed his concern that its removal would lead to lawsuits "from the enemies of 'Knowledge of Christianity' who will expel psalms and prayers from the teaching". These enemies were not Muslims but the humanistic society (Sogaard 2009). Certain study-of-religions scholars, for example, Tim Jensen, may also argue that RE should become compulsory and adhere to human rights standards. Haarder responded to such an argument by suggesting Jensen a 'legalistic' rather than a 'cultural' point of view.

The political debates reveal several points. Statements from various politicians, including ministers of education, reveal that they are 'not' well-informed about the national curriculum of 'Knowledge of Christianity' in addition to the general aims and articles in the Education Act. They also do not distinguish between the overall aim of elementary schools and the executive orders for RE as a school subject. Moreover, the debates also illustrate that many politicians in Denmark are ambiguous when regarding questions about the characteristics of Denmark and the so-called Danish values and how they perceive RE (and the overall school aim) to fit into their values. Certain politicians argue that the opt-out possibility could be removed as RE is a non-confessional knowledge-based subject. However, they also argue that RE aims to socialise pupils into the so-called Danish values based on biblical stories and Evangelical Lutheran Christianity. They express a conservative communitarian citizenship thinking based on essentialised notions about culture, religion and identity. In these notions, all ethnic Danes consider Christianity as the central foundation of their lives, mentality, thinking and identity, regardless of their preference. They also argue for 're-ethnicisation of citizenship', which is an exclusivist thinking of citizenship (Joppke 2010). It views the act of socialising pupils, citizens and especially newcomers into a particular political style and central democratic values established as a special culture.

Other politicians agree on the importance of RE's aim at national-cultural Christian socialisation but also argue that Danish values should also include freedom of religion, liberal and democratic thinking and a school reflecting and promoting the same values. Moreover, they also fear that removing the out-out possibility will result in human rights lawsuits although the subject is knowledge-based and not related to preaching. Notably, most of the political discourses demonstrate examples of the 'culturalisation of politics' (Mouritsen 2008). In such discourses, most of the particular values and cultures that they introduced are democratic and human rights values (shared by many countries). However, such values are also Danish based on a specific way of being Christian due to the Lutheran reformation and Christian thinkers, such as Grundtvig. A third position is illustrated by left-wing politicians who do not agree with the national-cultural Christian notion of Danish culture, citizenship or profile of RE. However, they perceive RE as not based on the study of religion and not in line with RE in the Gymnasium programme but as a philosophically based subject:

What can be concluded is, that no government so far has managed (or wished) to remove the opt-out possibility, not least because many politicians seem to fear that this

eventually would result in a change in both the name and the profile of RE. A change that would make it more similar to RE in the Gymnasium, and a change, thus, that they do not want because they prefer to have an RE in line with the broadly accepted neo-nationalistic, and pro-Christian aspirations of the majority of politicians.

#### 4.2. Upper Secondary School (Gymnasium)

Jensen argued that RE in the Gymnasium should have been with no opt-out possibility from 1967 to 1971; however, it was not removed until 1995. Political discussions took place regarding the removal of the opt-out possibility, and various political parties and individuals had different motivations for the aim to remove it. However, the removal had no objections during voting in favour of the bill introduced by the Minister of Education. The suggestion to remove the opt-out possibility was recommended by a committee appointed by the Ministry of Education as part of a general evaluation project covering the entire Danish education system with all subjects offered. The arguments were that RE was a humanistic knowledge and skills subject that aim at developing pupils' ability to understand and reflect and that RE constituted an important part of the upper secondary school's general education ('Allgemeinbildung'). Furthermore, another committee under the Ministry of Education published the result of their investigations (*Temahæfte* nr. 42) on the position of the so-called 'bilingual' (read: immigrants with a Muslim cultural-religious background) pupils in the Gymnasium. The committee argued that RE in the Gymnasium was well suited to further a fruitful 'meeting of cultures' and the integration of the 'other-cultural' pupils and future citizens into the pluralist democratic Danish society. As a result, the committee recommended the abolition of the opt-out possibility. Nobody should be able to 'evade' participation in RE and thus integration.

As discussed by the former Executive Committee of the Association for RE-teachers in the Gymnasium and Jensen (See [Jensen 1994](#), pp. 70, 77–78), several aspects of the argumentation were problematic from a professional point of view, although one completely agreed to the removal of the opt-out possibility. Some of the problems were linked to the lack of understanding of the committee and subsequently politicians and the Ministry of Education of the study-of-religions basis and characteristics of RE in the Gymnasium. As claimed by the proponents, this subject did not aim or contribute to the aim to 'support and develop common religious ideas' and did not 'preach' pluralism, in addition to providing knowledge about different religions. Therefore, the subject is a fairly perfect example of the type of RE promoted by scholars propagating that RE contributes to 'religious literacy' through the study of religions. Additionally, several politicians in the past expressed their opinions about the potential accomplishments of RE regarding 'religious literacy', including fostering citizens who are knowledgeable, can cope with pluralism and/or are tolerant and multiculturally competent. However, as mentioned by Jensen in 1994, although the term 'integration' has been recommended, the intention was 'assimilation', also from the perspective of various political parties. Furthermore, although RE aimed at all bilingual and 'other-cultural' pupils in principle, it targeted mostly Muslim pupils. Another interesting aspect of the process and discussion leading to the abolition of the opt-out possibility was the intention of the Ministry of Education to consult religious community representatives ([UVM 1995](#), explanatory notes). As argued by Jensen in previous articles, such an aspect would not adhere to the study-of-religions-based secular RE in general and in the Danish Gymnasium.

All the political parties agreed with the bill and its rationale. The only critical remark in the parliamentary debate came from a spokesperson from the left-wing party Enhedslisten (the 'Red–Green Alliance'). He was not against the bill but found it unacceptable if religious representatives could interfere with the teaching about religions as expressed in the explanatory notes. The Minister of Education assured that this was not the intention; however, the spokesperson maintained that dialogue with different interest groups is necessary. To the best of the authors' knowledge, the Ministry has not conducted any such dialogue with any religious 'interest groups'.

## 5. Concluding Discussion

Assuming that a pair of parents to a student (below age 18) in the Danish Gymnasium (upper-secondary school) filed a complaint against the Danish state, complaining that RE (with no opt-out option given) in the Gymnasium violated their parental rights with regard to the religious upbringing of their child: the school subject, so they claimed, inculcate a relativist approach to religion (by way of its neutral, comparative and historical approach to religion). A relativist approach is in conflict with their absolutist truth claims, namely that there is but one true religion and that all other religions are false. What would be the chances that the ECtHR passed a judgment in favour of the parents?

Our qualified guess is that the ECtHR would not vote in favour of the parents. The ECtHR in earlier cases has stressed the right and plight of the state to provide citizens with knowledge about the world. Additionally, the state that has the right to—as Slotte correctly remarks when dealing with *Folgerö and Others v. Norway* (Slotte 2011, p. 54)—‘set up and plan the curriculum’, and ‘[t]his [right] may include teaching about religious and other life-views’. As observed by the ECtHR:

The second sentence of Article 2 of Protocol No 1 does not prevent States from imparting through teaching or education information or knowledge of a directly religious and philosophical kind. It does not even permit parents to object to the integration of such teaching or education in the school curriculum, for otherwise all institutionalised teaching would run the risk of proving impracticable. (*Folgerö and Others v. Norway* note 1, para 84)

The ECtHR, moreover, adds that (also quoted by Slotte) ‘the second sentence of Article 2 of Protocol No 1 does not embody any right for the parents that their child be kept ignorant about religion and philosophy in their education’ (*Folgerö and Others v. Norway* note 1, para 89). This statement is followed by the demand to the state, namely that it must ensure that the information or knowledge included in the curriculum is ‘conveyed in an objective, critical and pluralistic manner’. As discussed in our introduction, the ECtHR held that the Norwegian state had not fully managed to enable the KRL to achieve such a demand. In contrast, we are certain that the ECtHR would find that the Danish state had managed RE in the Gymnasium. The Danish Gymnasium RE is solidly based on the academic scientific study of religion, and we agree with Alberts’ conclusion to her contribution (on RE in Norway and the ECtHR decision and Norwegian efforts to remedy the problems) to [Franken and Loobuyck \(2011\)](#):

( . . . ) the judgments show that if religious education in contemporary plural, secularised societies is to be integrative and obligatory, only a ‘religious-studies based religious education’ ([Jensen 2008](#); see also Jensen’s contribution in this volume) can be said to be in accordance with human rights: in contrast to ‘theologies’ (be they Christian, Muslim, Buddhist etc.), which study religion from an ‘insider’s perspective’, the academic Study of Religions seeks to provide a ‘critical, analytical and cross-cultural study of religion, past and present [ . . . ]’. ([Alberts 2011](#), pp. 111–12)

Returning to our fictive plaintiff and the complaint brought before the ECtHR, the essential matter in terms of theory and method (approach) is this: RE (to be compulsory with no opt-out possibility) must be over and above any religion, it must be as neutral and objective as can be (we make no claim that it is possible to be absolutely neutral or objective but the teaching and teacher must strive for it and do so in a professional and well-educated manner), and the teaching must be methodically (*not* ideologically) ‘a- or transreligious’ in its general approach. All religions and religious phenomena must be approached in an equal manner, and a general analytical terminology must be introduced and used for the analysis and teaching about religions—religions that must thus be seen from a study-of-religions point of view (and not from a personal, religious or anti-religious point of view) as dependent variables. Dependent variables are to be approached from a

cross-cultural and comparative perspective as historical and social and cultural facts, as human and social phenomena.

Regarding the potential complaint about a study-of-religions-based RE inculcating a 'relativistic' approach to religion in conflict with the (imagined) approach of the parents (as well as regarding whatever methodological and philosophy-of-science related questions about 'objectivity'): a compulsory study-of-religions based RE must find ways to incorporate teaching about various notions of and approaches to religion in order to openly reflect on and 'relativise' its own study-of-religions approach to religion. Religion, inside classrooms as well as outside, can be approached in more than one way, and this fact must be shared with the pupils. Aspects of the didactics of a study-of-religions-based RE must thus be critically included in the RE. A school subject:

based upon a scientific approach must always question itself, and because an explicitly self-reflective and self-critical dimension is necessary to prevent that a religious studies based religious education may justly be accused by opponents for constituting yet another hegemonic 'discourse', thus no longer capable of meeting the requirements for a compulsory Religion Education. (Jensen 2011, p. 144)

Considering now RE in Danish *elementary* school we are equally certain that this school subject can *not* 'pass the test' of the ECtHR. We are convinced that an article providing the parents with the right to apply for their child to opt-out must be passed. As argued in several earlier publications, the executive orders and guidelines for the current Danish elementary school RE, despite a few recent amendments, still cannot, from a human rights as well as study-of-religions point of view, be characterized as 'objective, critical and pluralistic'. The reasons for this are similar if not identical to the reasons given by the ECtHR in the case of Folgerö and Others v. Norway. Slotte summarises the 'internal tensions and even contradictions as regards the KRL subject' as they were pointed out by the ECtHR in 2007:

'Whereas pupils should gain thorough insight into Christianity, the goal as far other world religions and philosophies are concerned is sound knowledge of them' 'Pupils should become thoroughly acquainted with the Bible and with Christianity as part of Norwegian cultural heritage and as a source of faith, morality, and a view of life.'

'The KRL subject should also acquaint the pupils with other world religions and orientations as living sources of faith, morality and views of life.'

'Pupils should learn the fundamentals about the Christian faith and Christian ethics in light of the positions taken in Luther's Small Catechism.'

'As far as other religious and non-religious life-views are here concerned, the pupils should study the main features of and important narratives of Islam, Judaism, Hinduism, and Buddhism, and know about secular orientations, the development of the humanist tradition, and the modern humanist life view'. (Slotte 2011, p. 58)

Similar stances can be found in the current Danish executive orders and guidelines. The qualitative difference between Christianity and other religions in the Norwegian KRL, strongly criticized in the ECtHR judgment, can be seen in Danish elementary RE of today. One of the overall aims of the subject reads:

the pupils shall acquire knowledge about Christianity in a historical and contemporary context and about Biblical stories and their importance for the foundational values of our culture ('kulturkreds'). In addition, the pupils shall in grade level 7–9 gain knowledge about other religions and life-views ('livsanskuelser'). (UVM 2019, author's translation)

Besides 'familiarising' (note the term!) the pupils with the impact of Christianity and, in particular, Biblical stories on 'foundational Danish values', the executive orders and

guidelines also make it clear that this content should be taught with a focus on what it says about ‘basic values and interpretations of life’ and it should be seen and used as a resource from which the pupils can learn:

The Biblical stories contain a view of life, a view on humans and a view on existence that enable the pupils to understand and realize the limits of human life: beginning, end, love and evil, despair and hope ( . . . ). (UVM 2019, p. 33, author’s translation)

Regarding ‘other religions and life-views’ it is a matter of gaining ‘some knowledge’ (sic!) about the main ideas, history, concepts and rituals. In addition, the point of departure for the teaching is to be life philosophy and ethics centred on values and interpretation of life, and it is what is considered the existential questions and experiences of the pupils that serve as the point of departure for looking into answers given within Christianity and ‘other views of life’. When the main content until grades 7–9 is Christianity and Biblical stories, the life-philosophical questions and answers from which the pupils can learn mainly will be seen as originating with and pertaining to Christianity. Again, the ECtHR (dealing with the 2007 Norwegian RE) as well as the authors of this article (dealing with the 2022 Danish RE) do *not* find it problematic that Christianity and the dominant variant thereof in Denmark are given more time and space than any other single religious tradition. Jensen has time and again argued in favour of such a quantitative ‘bias’. This one religion simply happens to be the largest in the world, the largest in Europe and in Denmark (as in Norway)—as well as the most influential in both Europe and Denmark. The problem, rather, is that the formulations and intentions of the executive orders and guidelines are discriminatory with regard to minority- or ‘other’ religions because they are in favour of the majority religion. It is not about quantity but about quality. The problem is the obvious differential treatment and normative evaluation of the religions and their hoped-for importance for the pupils’ personal (not to say religious) development as well as for the well-being of the democratic, pluralist Danish society. As was the case in Norway: the Danish state comes up with a biased and far from neutral (and in that respect ‘objective’) RE in its neo-nationalist and politics-of-identity efforts to promote what is considered fundamental values embedded in the Christian religion and the Danish cultural heritage thought to be deeply rooted therein.

In 1992 the Danish Institute of Human Rights published a report on freedom of religion in Denmark (Fledelius and Juul 1992). The authors, when dealing with the then RE in elementary school wrote that this RE ‘[m]ust be characterized as being objective, critical and pluralistic’. Jensen (1999) however, strongly objected to their conclusion:

The basis for the conclusion made by the two authors is simply far from sufficient. In fact they seem to reach the conclusion solely on the basis constituted by the fact that the teaching ‘also aims at giving the children knowledge of foreign attitudes’. But even this is and was, as demonstrated (by Jensen in his 1999 article and analysis of the then elementary RE) a truth in need of strong modification.

In 2018, immediately after the introduction of the executive orders and guidelines for the current RE in elementary school, Decara and Lassen (2018), human rights scholars at the same Danish Institute of Human Rights, wrote an article to the journal of the association for elementary-school RE-teachers. The article dealt with the question whether elementary school RE could ‘pass the test’ of the ECtHR, thus making it possible for the Danish state to abolish the opt-out option. Though the authors were very careful not to be too dismissive of the elementary school RE, they—with reference to analyses of Kjeldsen (2016), analyses demonstrating that elementary school RE treats Christianity in a qualitatively different way from what is the case when it comes to ‘other’ religions—advice the Danish state to conduct a ‘service check’ of RE in elementary school to determine whether it adheres to human rights standards as mandated by the ECtHR regarding religious education. Moreover, Decara and Lassen also point to the evident problem that these ‘other religions’ are to be taught only at the higher grade levels (even if they may be included in the teaching on the lower grade levels, and, last but not least, they question the degree to which the

teaching materials are of such a kind as to further emphasise pro-Christian tendencies, as demonstrated by Kjeldsen (2016).

The article by Decara and Lassen prompts a few words on what might, nevertheless, arguably make the ECtHR reach another decision. Decara and Lassen mention a judgment by the ECtHR from 2017. The case dealt with a complaint filed by two Swiss parents who, with reference to their freedom of religion and the ECHR Protocol 1, Article 2, wanted to have their daughters exempted from compulsory swimming lessons. The Swiss authorities, denying the daughters and parents that right, claimed that the refusal to do so was legitimate since it was embedded in law and had a legitimate aim—namely to protect the girls against social exclusion in line with the general obligation of the school to further social integration not least of pupils with a non-Swiss background. The judgment of the ECtHR was in favour of the arguments of the Swiss state, stressing, furthermore, that the Swiss handling of the case was within the ‘margin of appreciation’.

Thinking of this case, the two human rights scholars, as well as the two authors of this article, ponder whether something similar might happen if the ECtHR were to deal with a complaint filed against a Danish state that did no longer have the opt-out possibility legally in place. This question seems worth pondering since it seems that the ECtHR—with regard to freedom of religion including the rights of parents to bring up their children in accordance with their own religious (and a-religious or other-religious) norms and traditions—in several cases has tended to give more and more weight to the principle of margin of appreciation *and* to the right of states to trump the right of parents if only the state can argue that the rights and religious freedom of the parents serve the purpose of what is called ‘social cohesion’ (e.g., the French headscarf-/burqa-case) or the displaying of what the ECtHR (re-)names cultural and cultural heritage symbols like the crucifix. The final judgment in the *Lautsi v. Italy* case is a good example.

However, we do not think it will be easy for the Danish state if ‘taken to Strassbourg’, and if the ECtHR should ask these authors for a professional study-of-religions-based evaluation of Danish elementary-school RE. We shall have no reservation: the Danish elementary school RE does not comply with the human rights standards as staked out in several RE-related cases. Statements by Danish politicians, as to the aims and purposes of elementary-school RE, as well as to the reasons and purposes for abolishing the opt-out option, support this qualified opinion of ours.

Another important aspect of the situation in Denmark transpires from a recent ‘boast’ by a RE teacher: she claimed in public that she belonged to no more than 41% of the RE-teachers in elementary school who did not have a special education in RE. She was, nevertheless, convinced that she did a good job as long as she had a personal engagement in (what she considered) the true subject matter of the school subject, namely the spiritual and ethical ‘big questions’ and the personal development of the pupils (Sørensen 2022). Almost the same has been stated in public by the chairman (for at least three decades) of the elementary-school RE-teachers’ association John Rydahl. Rydahl, ridiculing certain university college teachers who had expressed their hope and wish to have RE-teachers who were well educated in the study of religion/s, claimed that they had totally misunderstood the role and purpose of the school if they wanted to have the academic study of religion/s to become the model and basis for school RE. School RE and elementary school in general are not, Rydahl opined, supposed to transmit scientifically based knowledge to the children. It is supposed to influence and contribute to the personality of the pupils, including their spiritual and ethical edification (Møller 2021). If up to Rydahl, then elementary-school RE is to be totally independent of what scholarship has to say about religion and the study thereof. Several teacher educators, teachers and politicians share the opinion of Rydahl, and several of them are identical to those who, time and again, have argued in favour of the abolition of the opt-out option. At the same as they insist that elementary-school RE should not ‘just’ teach about (Danish) Christianity but also ‘preach’ it as the core and crown of Danish culture and identity.

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