

Home-Schooling Persecution Not a Problem, DOJ Tells Supreme Court

The United States Supreme Court has scheduled *Romeike v. Holder* for review conference. The court is expected to rule on whether or not to take the case and issue its decision in its orders Monday.

The Romeike family was granted asylum in 2010 by a federal immigration judge who found that Germany's treatment of the family amounted to persecution. As evidence he cited state officials' threats against home-schoolers in general to levy crushing fines, file criminal charges and take away children, and against the Romeikes in particular for their sincere religious beliefs.

The Obama administration appealed and has subsequently opposed granting the family asylum protection. The 6th Circuit Court agreed with the Obama administration, saying that Germany was just enforcing its law.

After U.S. Attorney General Eric Holder initially declined to reply to the Romeikes' original petition, the Supreme Court ordered him to respond. In the response, Justice Department lawyers argued that Germany was not specifically persecuting home-schoolers but enforcing laws that apply to everyone.

Germany has good reasons, they claimed, for not allowing home schooling, and they said the German government's desire to "promote socialization, pluralism, tolerance and democracy" outweighs the human right of parents to decide how their children are educated.

The Justice Department lawyers cited the infamous 2006 Konrad decision of the European Court of Human Rights,

which accepted Germany's intolerance of home schooling, as a reason the Supreme Court should not get involved.

Grave Injustice

Home School Legal Defense Association (HSLDA) founder and chairman Michael Farris is the principal author of the Romeike brief. He says the Supreme Court should hear the case primarily in order to right a grave injustice, but also because our own federal circuit courts are confused on the issue of what legal standard to use when determining at what point prosecution becomes persecution.

"The Supreme Court should intervene to settle the law in the federal circuits, which are in a state of chaos over how to decide when a foreign law is used to persecute people who act on the basis of their religion, like the Romeikes," Farris says. "The 6th Circuit's decision perverted congressional intent of asylum law and used it as a sword against the Romeikes. This is an absurdity that we hope the Supreme Court will overturn."

The 6th Circuit panel of judges ruled in April 2012 that Germany's prosecution and harsh treatment of home-school parents was merely law enforcement action that applied "equally" to everyone and did not on its face target people protected by asylum law. In doing so, the court borrowed a legal standard articulated by the 1993 Supreme Court decision in *Smith v. Employment Division*.

The landmark Smith case changed the way the Supreme Court reviewed religious freedom cases. In it, the court ruled that it would not look at individual challenges to laws on religious grounds if the challenged law did not discriminate against a religious group on its face and the law was generally applicable—meaning that it applied to everyone.

However, the Supreme Court used this standard in the context of reviewing domestic government entities. There is no

indication the standard was ever intended to apply to judging whether foreign governments were persecuting their own people.

'Appalling'

HSLDA Director for International Affairs Michael Donnelly also criticized the 6th Circuit ruling.

"It is appalling that three American judges ignored critical evidence from Germany's own Supreme Court, which explicitly states German states may treat religiously or philosophically motivated home-schooling parents unequally and harshly," he says.

"The recent story of the Wunderlich family, whose children were seized just because of home schooling and who are now effectively imprisoned in Germany, demonstrates how important this issue is," Donnelly continues. "The fact that our own government is unwilling to support asylum for these families is troubling."

The right of parents to decide how their children are educated is enshrined among the most fundamental human rights. Nearly a dozen major human rights documents and treaties, including the 1948 Universal Declaration on Human Rights, recognize how important the role of parental decision-making is in the education of children and that free governments must recognize and respect this important right.

The Berlin Declaration catalogs these treaties in detail.

Dark History

In a recent visit to Patrick Henry College, Thomas Schirrmacher, ambassador for human rights and executive chair of the Theological Commission of the World Evangelical Alliance, and director of the International Institute for Religious Freedom, lectured on the issue of religious freedom.

Based in Bonn, Germany, Schirrmacher has been a longtime

proponent of home-schooling freedom in Germany, writing and publishing several books on the subject. He explained that laws that depart from internationally recognized human rights standards are not a legitimate excuse for authorities to violate the rights of the people within their jurisdiction.

“The fact that the laws of a nation make something lawful doesn’t make it right,” he said. “Everything Hitler did in Germany was allowed by the law. He never moved until the law allowed him. Applying the national law of Germany at the time, you couldn’t have convicted Hitler of a crime. But what he did obviously and dramatically was a crime against humanity.”

Schirrmacher, who has conducted extensive research on the issue, indicated that the effective ban on elective home education was introduced into German law by the National Socialist regime.

“In 1938, the National Socialists passed a law making it a criminal offense if parents did not send their children to their schools,” he said. “These laws were never changed after the war in order to allow for home schooling, which had been possible before. I believe German leaders should take action to protect the right of parents to educate their children at home.”