

<u>Originating Body</u>	EUROPEAN COMMITTEE OF SOCIAL RIGHTS
<u>Decision</u>	
Type	Decision on the merits
Date	30/3//2009
Importance level	1*
Conclusion	Violation of Article 11§2 of the 1961 Charter (discriminatory content in sexual and reproductive health education material), no violation of Articles 16 and 17 of the 1961 Charter
Separate Opinion	No
Published in	
<u>Complaint</u>	
Title	INTERIGHTS v. Croatia
Number	45/2007
Respondent State	Croatia
Date of registration	12/10/2007
Articles	11, 16, 17 and the non-discrimination clause of the Preamble
<u>Other information</u>	
ECHR Case-law	Case of Kjeldsen, Busk Madsen and Pedersen v. Denmark, Judgment of 7 December 1976 Case of Folgerø and Others v. Norway, Judgment of 29 June 2007
ECSR Case-law	Conclusions XV-2, Addendum, Slovakia, Conclusions XV-2, Belgium, Conclusions 2003, Slovenia
Other sources	Recommendation No. R (88)7 of the Committee of Ministers of the Council of Europe on school health education and the role and training of teachers
Keywords	Right to health, health education, sexual and reproductive health education, non-discrimination

NOTICE

I. Discriminatory content in sexual and reproductive health education material; Article 11§2 in the light of the non-discrimination clause

The Committee considers that Article 11§2 requires that health education in school be provided throughout the entire period of schooling and that it cover the following subjects: prevention of smoking and alcohol abuse, sexual and reproductive health education, in particular with regard to prevention of sexually transmitted diseases and AIDS, road safety and promotion of healthy eating habits. Apart from the family framework, the most appropriate structure for the provision of health education, including sexual and reproductive health education, is the school, inasmuch as the general objective of education is to communicate knowledge which enables pupils to tackle life in its multi-faceted totality.

More specifically, the Committee acknowledges that cultural norms and religion, social structures, school environments and economic factors vary across Europe and affect the content and delivery of sexual and reproductive health education. However, relying on the basic and widely accepted assumption that school-

* 1 – 3 importance levels:

- 1 – High importance: new case-law or decisions which make a significant contribution to the clarification or modification of the case-law
- 2 – Medium importance: Decisions which do not make a significant contribution to the case-law but nevertheless do not merely apply existing case-law
- 3 – Low importance: decisions with little legal interest

based education can be effective in reducing sexually risky behaviour, the Committee considers that states must ensure:

- that sexual and reproductive health education forms part of the ordinary school curriculum;
- that the education provided is adequate in quantitative terms, i.e. in respect of the time and other resources devoted to it (teachers, teacher training, teaching materials, etc.);
- that the form and substance of the education, including curricula and teaching methods, are relevant, culturally appropriate and of sufficient quality, in particular that education is objective, based on contemporary scientific evidence and does not involve censoring, withholding or intentionally misrepresenting information, for example as regards contraception and different means of maintaining sexual and reproductive health;
- that a procedure is in place for monitoring and evaluating the education with a view to effectively meeting the above requirements.

Having regard to the non-discrimination clause in the Preamble to the Charter, sexual and reproductive health education must be provided to school children without discrimination on any ground, direct or indirect, it being understood that the prohibition of discrimination covers the entire range of the educational process, including the way the education is delivered and the content of the teaching material on which it is based. This requirement that health education be provided without any discrimination has two facets: children must not be subject to discrimination in accessing such education, which should also not be used as a tool for reinforcing demeaning stereotypes and perpetuating forms of prejudice which contribute to the social exclusion of historically marginalised groups and others that face embedded discrimination and other forms of social disadvantage which has the effect of denying their human dignity.

With respect to the national school curricula, the Committee does not consider that it is its role to assess in fine detail their contents. The setting and planning of such curricula involve resolving complex and overlapping questions of pedagogical methodology, the maximisation of resource allocation and other practical considerations, the solution to which may vary according to the country and the particular circumstances in question. As a result, the Committee considers that the authorities must enjoy a wide margin of discretion in determining the cultural appropriateness of the educational material used in the ordinary Croatian school curriculum. Moreover, the Committee notes that the main indicators relating to sexual and reproductive health among youth do not clearly establish that the level of awareness of sexual and reproductive health is notably worse than in many other European countries. Finally, the Committee also attaches weight to the fact that the Government in recent years has taken a number of initiatives to revise and develop the curricula in this field. In the light of all these considerations, the Committee does not consider that it has been established that the overall content of the ordinary curriculum in general is sufficiently deficient so as to fall short of the substantive requirements imposed by Article 11§2.

However, the Committee does find that certain specific elements of the educational material used in the ordinary curriculum are manifestly biased, discriminatory and demeaning, notably in how persons of non-heterosexual orientation are described and depicted. The conclusion in this respect is based on an examination of specific material contained in the evidence provided by the complainant organisation (*Response from INTERIGHTS to the questions of the Committee – Case document No.7, paragraphs 8-16 together with Annex A (1)*), in particular the extracts from the mandatory Biology course textbook used at secondary school level (*Biology 3: Processes of Life*) in which it is stated that “*Many individuals are prone to sexual relations with persons of the same sex (homosexuals –men, and lesbians –women). It is believed that parents are to blame because they impede their children’s correct sexual development with their irregularities in family relations. Nowadays it has become evident that homosexual relations are the main culprit for increased spreading of sexually transmitted diseases (e.g. AIDS)*”, or “*The disease [AIDS] has spread amongst promiscuous groups of people who often change their sexual partners. Such people are homosexuals because of sexual contacts with numerous partners, drug addicts because of shared use of infected drug injection equipment and prostitutes*”. These statements stigmatize homosexuals and are based upon negative and degrading stereotypes about the sexual behaviour of all homosexuals. Although the Government maintains that all curricula are taught in compliance with domestic law as well as international standards, it does not dispute the existence of the above-mentioned statements. The Committee holds that such statements serve to attack human dignity and have no place in sexual and

reproductive health education: as such, their inclusion in standard educational materials constitutes a violation of Article 11§2 in the light of the non-discrimination clause of the Preamble to the Charter.

In effect, by officially approving or allowing the use of the textbooks that contain these anti-homosexual statements, the Croatian authorities have failed in their positive obligation to ensure the effective exercise of the right to protection of health by means of non-discriminatory sexual and reproductive health education which does not perpetuate or reinforce social exclusion and the denial of human dignity. As the European Court of Human Rights has stated in the field of the right to education, the public authorities have a duty which “is broad in its extent as it applies not only to the content of education and the manner of its provision but also to the performance of all the ‘functions’ assumed by the State. [...] In addition to a primarily negative undertaking, it implies some positive obligation on the part of the State” (see Case of Folgerø and Others v. Norway, Judgment of 29 June 2007, § 84). In the context of the right to protection of health through the provision of sexual and reproductive health education as set out in Article 11§2, this positive obligation extends to ensuring that educational materials do not reinforce demeaning stereotypes and perpetuate forms of prejudice which contribute to the social exclusion, embedded discrimination and denial of human dignity often experienced by historically marginalised groups such as persons of non-heterosexual orientation.

II. Article 16 taken alone and in the light of the non-discrimination clause

Having regard to the complainant’s allegation that family status and sexual orientation are presented and treated in a discriminatory manner in the content of sexual and reproductive health education, the Committee considers that this question rightly belongs under Article 11§2 and in the light of its finding in respect of that provision it holds that no separate issues arise under Article 16 taken alone and in the light of the non-discrimination clause.

III. Article 17

The Committee recalls that Article 17 of the 1961 Charter provides for the rights of mothers and children to social and economic protection. In its examination of national situations the Committee has dealt with the following issues:

- the legal status of the child;
- children in public care;
- protection of children from violence, ill-treatment and abuse;
- young offenders.

Consequently, in view of the wording of Article 17 of the 1961 Charter the Committee does not consider that the issues raised by the complainant organisation fall within the scope of this provision.