

DECISION ON THE MERITS

30 March 2009

**International Centre for the Legal Protection of Human Rights (INTERIGHTS)
v. Croatia**

Complaint No. 45/2007

The European Committee of Social Rights, committee of independent experts established under Article 25 of the European Social Charter ("the Committee"), during its 235th session attended by:

Ms Polonca KONČAR, President
Mssrs Andrzej SWIATKOWSKI, Vice-President
Colm O'CONNOR, Vice-President
Jean-Michel BELORGEY, General Rapporteur
Ms Csilla KOLLONAY LEHOCZKY
Mr Lauri LEPPIK
Ms Monika SCHLACHTER
Birgitta NYSTRÖM
Lyudmila HARUTYUNYAN
Mssrs A. Rüchan ISIK
Petros STANGOS
Alexandru ATHANASIU
Luis JIMENA-QUESADA
Ms Jarna PETMAN

Assisted by Mr Régis BRILLAT, Executive Secretary to the European Committee of Social Rights

Having deliberated on 17 February 2009 and 30 March 2009;

On the basis of the report presented by Ms Monika SCHLACHTER,

Delivers the following decision adopted on this last date:

PROCEDURE

1. The complaint dated 10 October 2007 was registered on 12 October 2007. The International Centre for the Legal Protection of Human Rights (“INTERIGHTS”) alleges that Croatia is not in conformity with Article 11§2, and 16 taken alone and in the light of the non-discrimination clause in the Preamble; nor with Article 17 of the European Social Charter 1961 (“the Charter”).
2. On 1 April 2008, the Committee declared the complaint admissible.
3. In accordance with Article 7§1 and §2 of the Protocol providing for a system of collective complaints (“the Protocol”) and with the Committee’s decision on the admissibility of the complaint, on 10 April 2008 the Executive Secretary communicated the text of the admissibility decision to the Croatian Government (“the Government”), INTERIGHTS, the Contracting Parties to the Protocol and the states that have made a declaration in accordance with Article D§2 of the Revised Charter, the European Trade Union Confederation (ETUC), Businesseurope and the International Organisation of Employers (IOE).
4. In accordance with Article 31§1 of the Committee’s Rules, the Committee set a deadline of 16 May 2008 for presentation of the Government’s submissions on the merits. It also set 16 May 2008 as the deadline for the Contracting Parties to the Protocol, the states that have made a declaration in accordance with Article D§2 of the Revised Charter and the international employers’ organisations and trade unions referred to in paragraph 2 of Article 27 of the Charter to submit any observations on the merits.
5. The Government’s submissions on the merits of the complaint were registered on 19 May 2008. The submissions consisted of a letter referring to the Government’s observations put forward at the admissibility stage.
6. In accordance with Article 31§2 of the Committee’s Rules, the President of the Committee invited INTERIGHTS to reply to these submissions by 11 July 2008. INTERIGHTS’ reply was registered on 25 July 2008 and forwarded to the Government on 12 August 2008.
7. In its letter registered on 25 July 2008 INTERIGHTS made a request for a public hearing pursuant to Rule 33 of the Committee’s Rules, but by its letter of 24 October 2008 the Committee informed INTERIGHTS of its decision not to grant the request in the case at hand.
8. In a memorandum dated 10 September 2008, the European Centre for Law and Justice represented by its Legal Counsel Mr Roger Kiska, made a “motion for third party intervention and observations on admissibility and the merits”. The Committee by letter of 24 October 2008 informed Mr Kiska of its decision to deny the motion as the criteria for a third party intervention as laid down by Rule 32 of the Committee’s Rules were not met.
9. By letter dated 4 November 2008, the Committee asked the parties to reply to the following questions :

“Questions to the Parties

- Please clarify what is the content of mandatory curricular sexual and reproductive health education (as opposed to optional, elective and extra-curricular education) and in particular what is the number of hours of such education currently taught in primary and secondary education in Croatia (broken down per school year);
- Please give up-dated statistical information on indicators of sexual and reproductive health in Croatia (sexually transmitted diseases, teenage pregnancies, HIV/AIDS and any other relevant indicators).

Question to the respondent Government

- The Government is invited to provide the text of the specific provisions of the legislation relevant to the issues raised by the current complaint, in particular the Primary Education Act, the Secondary Education Act, the Gender Equality Act, the Family Act and the Act on Same-Sex Unions, in at least one of the official languages of the Council of Europe (please note: only translations of the relevant provisions are requested, not the entire legislation).

Question to the complainant

- The complainant is invited to give examples of text passages and/or illustrations in teaching material used in the context of mandatory curricular sexual and reproductive health education that it regards as discriminatory and on what grounds.”
10. The reply from INTERIGHTS was registered on 19 December 2008.
 11. The Government’s reply was registered on 19 December 2008.
 12. On 5 March 2009, INTERIGHTS submitted an “update” on recent developments in Croatia concerning issues raised in the complaint.

SUBMISSIONS OF THE PARTIES

a. The complainant organisation

13. INTERIGHTS asks the Committee to find that the situation in Croatia is not in conformity with Articles 11§2 and 16 taken alone and in the light of the non-discrimination clause in the Preamble as well as with Article 17 of the Charter, because Croatian schools do not provide comprehensive or adequate sexual and reproductive health education for children and young people.

b. The Government

14. The Government asks the Committee to reject INTERIGHTS' application in all its aspects.

RELEVANT DOMESTIC LAW

15. In their submissions the parties refer to the following provisions of domestic law :

16. The Constitution of the Republic of Croatia;

Article 14 of the Constitution reads:

“(1) Everyone in the Republic of Croatia shall enjoy rights and freedoms, regardless of race, color, gender, language, religion, political or other belief, national or social origin, property, birth, education, social status or other characteristics.

(2) All shall be equal before the law.”

17. Primary and Secondary Education Act

“Section 4

(1) The goals of education in the school institution are the following:

1. to ensure a systematic approach to teaching, stimulating and enhancing pupils' and students' intellectual, physical, aesthetic, social, moral and spiritual development in accordance with their abilities and aptitudes,

[...]

Section 67

School institutions shall:

- create conditions for a healthy mental and physical development and social well-being of pupils/students,
- take responsibility for pupils'/students' health and inform general practitioners and parents thereof. “

18. Act on Primary and Secondary Education Textbooks

Section 6 reads:

“Textbooks with contents which violate the Constitution of the Republic of Croatia and which is inappropriate with regards to human and minority rights, fundamental freedoms, gender equality, and citizenship through education will not be authorized for use.”

19. Gender Equality Act

“Section 8

(1) Harassment and sexual harassment shall be considered discrimination under this Act.

[...]

Section 14

[...]

(2) Education contents related to gender equality shall be an integral part of the system of preschool, elementary, secondary and tertiary education as well as life-long learning and professional development, which shall include the preparation of both genders for active and equal participation in all areas of life.

(3) The education contents referred to in Paragraph 2 of this Article shall promote non-discriminatory knowledge about women and men, the abolishment of gender inequality and gender stereotypes at all levels of education, as well as the recognition of gender aspects in all educational areas.

[...]

Section 40

The competent government body from Section 14 of this Act¹ shall be obliged to ensure that elementary and secondary school curricula, vocational education and training curricula and life-long learning curricula are in conformity with the provisions of this Act.”

20. Act on Same-Sex Unions

“Section 21

(1) Any form of discrimination, direct or indirect on the basis of a same-sex civil union, as well as on the basis of homosexual orientation, is prohibited.

(2) Encouraging other persons to discriminate is considered to be discrimination as cited in paragraph 1 of this article.

(3) Direct discrimination means any act which puts or has put a person who is a member of a same-sex civil union into a less favorable position in comparison to another person in a comparable situation, based on the fact that the person is a member of a same-sex civil union.

(4) Indirect discrimination exists when specific regulations, criteria or practices, which appear to be neutral, put or may put a person who is a member of a same-sex civil union into a less favorable position in comparison to all other persons. “

¹ As the competent body, Section 14 lists “the government body competent for education, agencies competent for education and institutions whose primary activity is education”.

NATIONAL CURRICULUM TOPICS

21. Curriculum for Primary Schools

In primary schools individual topics related to health education, i.e. sexual and reproductive health are taught within the framework of the following subjects: Natural and Social Sciences, Natural Sciences, Biology, Physical and Health Education, Foreign Language and all programmes of Religious Education which are carried out in accordance with agreements between the Government and the religious communities. Each curricular topic is dealt with in at least one class session, whilst some topics are covered over several class sessions. Alternatively, for the purposes of correlation and integration, some contents are implemented in other subjects (e.g. Croatian Language, Foreign Language, Geography, History...), depending on the plan of activities prepared by the individual teacher.

Below follow extracts from the primary school curriculum indicating overall objectives and specific topics covered in various subjects:

“The specific objectives of health education are oriented towards forming an understanding about hygiene and personal life-style.

[...]

In the safe and supportive environment of the school and the home, pupils should learn to take responsibility for their own health, which includes acquiring knowledge about a healthy diet, and learning about sexually transmitted diseases, protecting reproductive health, responsible parenthood, and effectively resisting the abuse of addictive substances and other types of risky behaviour. Information about health, health protection, personal health habits and the prevention of disease must be attuned to the pupils' age, interests and needs.

Health topics in education can also be connected across subjects with concrete curricular contents and topics which are obligatory to teachers of Natural Sciences, Biology, Physical and Health Education, class-masters and expert associates involved in education directly or in the implementation of other planned programmes and projects.

[...]

Natural and Social Sciences

2nd grade:

Topic 21: Child (girl, boy)

Topic 24: Health institutions (health institutions, health workers, emergency)

3rd grade:

Topic 18: Health (personal health, infectious diseases, treatment)

4th grade

Topic 13: Human body (body parts, organism).

Natural Sciences

5th grade

Topic 8: Puberty – changes and difficulties of growing up (puberty, reproductive system, personal hygiene, addictions).

Biology

8th grade

Topic 4: The structure and the role of the reproductive system (male and female sex organs, secondary sexual characteristics)

Topic 5: Conception and prenatal development (fertilisation or conception, foetal development, pregnancy, birth)

Topic 6: From birth to death (stages of life: birth, childhood, puberty, adolescence, maturity, old age and death)

Topic 7: Responsible sexual behaviour (health and sexual hygiene; humane inter-gender relationships; responsible sexual behaviour)

(Facultative topics – Topic 3: Health and diseases; Topic 5: Sports and health).

Physical and Health Education

7th and 8th grade

Objectives: 1. Educational, a) Basic theoretical knowledge:

Pupils learn about physiological changes which occur during puberty. It is also important for the pupils to acquire theoretical knowledge about the influence of physical exercise on the human metabolism, the cardiovascular, pulmonary and the musculoskeletal systems. Explain the need for a special daily schedule of food and fluid intake during physical exertion. Explain to female pupils which exercises are useful and which ones are harmful during the menstrual cycle.

The educational contents of Physical and Health Education in 7th grade stress particularly the need to highlight the meaning of physical activities with regards to the development of the female personality, and hence the pupils' sexuality and reproductive health. In this period of rapid growth and development, female pupils turn to different ways of controlling body weight. The acquisition of healthy eating habits and a healthy lifestyle is therefore invaluable for the quality functioning of the young organism."

22. Secondary School Curriculum

In secondary schools, health education, which includes sexual education, is represented in curricula for Biology, Ethics, Religious Education, Physical and Health Education, Psychology, Hygiene and Sociology.

Below follow summary extracts from the secondary school curriculum indicating the specific topics covered in a selection of subjects:

“Biology (four-year programme)2nd grade

Topic: Man, health and environment. Human health

Sexuality, reproduction and development. Reproductive system. Pregnancy and birth. Breast-feeding. Hygiene and reproductive system diseases. Effects of medicines and toxic substances on organism. Addiction.

3rd grade

Topic: Life processes

Describe the structure and role of certain organ systems of the human body and their functional disorders.

Reproductive glands and the reproductive system. Sexual life. Human embryonic development, pregnancy, birth, breast-feeding. Disorders in sexual and reproductive system functions.

Psychology (two-year programme)3rd grade

2.1.3: Adolescence – period of changes, factors of those changes, sexual and emotional maturity, changes of interests, aspirations and ideals.

2.1.5. Adult age – what maturity is and what are maturity criteria, adjusting to the partner, parenthood.

[...]

2.6.2. Adolescence – characteristics and problems of that age, factors of changes, sexual and emotional maturity, maturity, changes of interest, aspirations and ideals, adolescence conflicts and problems.

2.6.3. Adult age – maturity criteria, adjusting to the partner, parenthood, old age – biological changes and changes of abilities, health and illness, needs and problems of the elderly.

Sociology

2.10. Family, marriage and kinship.

2.10.3. Family organization. Marriage.

2.10.5. Alternative lifestyles: the single household, cohabitation, single parents, homosexual couples, communities.

Ethics4th grade

Topic: Life questions

3. Love, sexuality, marriage, family

Responsibility for one's life and various addictions.”

THE LAW

THE ALLEGED VIOLATION OF ARTICLE 11§2 TAKEN ALONE AND IN THE LIGHT OF THE NON-DISCRIMINATION CLAUSE OF THE PREAMBLE TO THE EUROPEAN SOCIAL CHARTER

23. Article 11§2 of the Charter reads:

Article 11 - The right to protection of health

Part I: “Everyone has the right to benefit from any measures enabling him to enjoy the highest possible standard of health attainable.”

Part II: “With a view to ensuring the effective exercise of the right to protection of health, the Contracting Parties undertake, either directly or in co-operation with public or private organisations, to take appropriate measures designed *inter alia*:

[...]

2 to provide advisory and educational facilities for the promotion of health and the encouragement of individual responsibility in matters of health;

[...]”

24. The non-discrimination clause of the Preamble to the Charter reads:

Preamble

“[...]

Considering that the enjoyment of social rights should be secured without discrimination on grounds of race, colour, sex, religion, political opinion, national extraction or social origin;

[...]”

A – Submissions of the parties

a. The complainant organisation

25. Firstly, the complainant organisation, INTERRIGHTS, states that sexual and reproductive health information in Croatia is delivered in time limited fragments through general school subjects, through occasional lectures by doctors of school-based medicine and through government-approved elective and extracurricular programmes resulting in an incoherent and inadequate approach to sexual and reproductive education which fails to meet the requirements of the Charter. According to the complainant organisation, students receive only a minimal amount of rudimentary sexual and reproductive health information in general subjects such as biology, nature and science and physical and health education, which together adds up to no more than a few hours over the entire course of their schooling. The complainant organisation estimates that the maximum number of hours devoted to potentially relevant topics throughout the period of schooling (primary and secondary) amounts to no more than 42 hours.

26. As regards the elective courses and the extracurricular programmes, INTERIGHTS emphasises that they by their nature are not mandatory and do not reach all students. Moreover, it is noted that the reach of the extracurricular programmes is limited because they usually are available only in certain cities and schools, and for discrete periods of time.

27. Secondly, INTERIGHTS states that the content of the sexual and reproductive health information provided to students falls considerably short of including of the comprehensive range of topics recommended by regional and international bodies as necessary and suitable for ensuring the protection and promotion of the health of young people or alternatively the information provided to students is out of date. Examples are provided of material taught as part of the national curriculum, which in the view of the complainant organisation could be considered to be scientifically inaccurate, gender stereotyped or outright discriminatory on grounds of sexuality and/or family status. In the former category belongs advice that young women should discontinue use of oral contraceptives for a while after several months of use, which is contrary to the recommendations of the World Health Organization (WHO). Turning to the question of stereotyping the complainant organisation suggests that gender stereotypes in school textbooks appear to be a general problem throughout the national curriculum. Women are primarily portrayed as mothers who are responsible for raising children, and are very often situated in traditional rural environments. When women are portrayed in a professional role, they are engaged in traditional female occupations, such as maids and teachers. Finally examples are given of material used in the Biology course where heterosexual relationships are presented as the “normal” form of relationship, implying that any other form of relationship is abnormal. Homosexuality is stigmatized as a result of incorrect sexual development, homosexual relations are presented as “the main culprit for increased spreading of sexually transmitted diseases (e.g. AIDS)” and homosexuals are characterised as a “promiscuous group” having sexual contacts with numerous partners.

28. INTERIGHTS emphasises in particular that information provided as part of the elective Catholic religious teachings course and the extracurricular TeenStar programme is not comprehensive and evidence-based: key topics such as the use of effective contraception are often deliberately excluded and in some respects the information is inaccurate and replete with bias and discrimination. The complainant further indicates that the elective Catholic religious teachings course discusses sexuality only in the context of marriage and reproduction, excludes accurate and objective information on condoms, contraception and abortion, and describes homosexuality as a “sinful” form of sexuality analogous to prostitution, incest and transvestism. As far as the TeenStar programme is concerned, the complainant organisation alleges that it focuses on the negative aspects of contraception to the exclusion of any information about its medically proven benefits and advantages. It includes language and messages that perpetuate stereotypical notions of proper gender roles, such as promoting beliefs about inherent “psychosexual” differences between men and women. The complainant organisation states that the Offices of the Ombudspersons for Gender Equality and for Children have both expressed concern about these specific aspects of the TeenStar programme, finding them contrary to Croatia’s own gender equality laws and international standards.

29. Furthermore, according to INTERIGHTS, the new GROZD programme selected in November 2007 by the Ministry of Science, Education and Sports to be implemented in a limited number of primary and secondary schools in a pilot phase with the possibility of being extended to all schools across the country depending on the evaluation of the pilot phase is discriminatory and unscientific in its content. The complainant organisation alleges that it presents many of the same deficiencies as TeenStar in areas such as gender stereotyping, the use of contraceptives and the relative merits of marriage compared to other forms of relationships.

30. Thirdly, INTERIGHTS states that sexual and reproductive health education is delivered by teachers of general subjects in the school curriculum such as Biology, Nature and Science who generally lack appropriate training and qualifications as sexuality educators. In addition, as far as the TeenStar programme is concerned, INTERIGHTS notes the concern expressed by the Office of the Ombudsperson for Children about the lack of rigorous standards for teachers of the programme who are not required to have a background in basic pedagogical education.

31. Fourthly, INTERIGHTS states that the monitoring and evaluation of reproductive and sexual health topics in the national curriculum as well as extra-curricular sexual and reproductive education programmes is inadequate. According to the complainant organisation, the Education and Teacher Training Agency is understaffed (only 107 advisors to cover about 850 primary and 430 secondary schools) and it monitors and evaluates mostly the quantitative aspects of implementation of the curriculum, as opposed to doing qualitative assessments. Furthermore, with respect to the extracurricular programmes it is alleged that government oversight in some cases is entirely absent: the complainant organisation indicates that there appears to be no government evaluation of the TeenStar programme that is known to exist or which is publicly available, despite the fact that the programme has been implemented in a relatively large number of schools for about a decade.

32. Finally, INTERIGHTS submits that Croatia's failure to date to institute an adequate programme of sexual and reproductive health education in schools has a disproportionate impact on and disadvantages the health and development of girls and young women. The absence of comprehensive, accurate and evidence-based sexual and reproductive health information leaves girls uniquely or more vulnerable than boys to certain health risks. Consequently, the situation amounts to unlawful discrimination on the grounds of sex. In support of this allegation, survey data are provided on contraceptive use that would appear to indicate that condom use during the first act of sexual intercourse has increased, but consistent condom use has not changed significantly, while at the same time more young people are reportedly having sexual intercourse. The use of contraceptive pills among 15-year olds is much lower than in certain other European countries. The complainant organisation also states that sexually transmitted infections such as Chlamydia and HPV are spreading; a recent study has shown that young women under 21 have the highest prevalence of high-risk HPV in Croatia.

b. The respondent Government

33. The Government states that curriculum-based sexual and reproductive health education in primary schools is integrated into other school subjects. Following the adoption of a new Curriculum for Primary Schools which has been implemented since the school year 2006/2007 health education, integrated into different regular school subjects (Nature and Society, Nature and Biology, etc.), is set out as one of the basic goals and tasks of general education which is realised through team work and through the cooperation of educational and health experts. In secondary schools sexual and reproductive health education is also carried out as part of regular subjects such as Biology, Ethics, Hygiene and Sociology among others.

34. Sexual and reproductive health education is also provided as part of the elective Catholic religious teachings course whereby, according to the Government, the right of parents to religious education of their children is respected. The Government further points out that each school based on its work programme may independently select topics from this field to be addressed in elective and optional courses as well as in extracurricular activities. Decisions in this respect fall within the competence of the school board.

35. The Government states that the Education and Teacher Training Agency (ETTA) and the National Institute of Public Health continuously conduct programmes in primary and secondary schools. As an example the Government mentions that from 2002 to 2007 the ETTA in cooperation with the "Andrija Štampar" School of Public Health organised education on sexuality and puberty for students in all primary schools.

36. The Government submits that in the context of the total school workload the number of school hours devoted to sexual and reproductive health education is adequate, and that with the newly introduced Curriculum for Primary Schools the number of school hours devoted to this field has further increased, thus ensuring that the sexual and reproductive health education provided is comprehensive and continuous. The Government further states that in the school year 2007/2008, a total of 292,667 primary school pupils and 82,790 secondary school pupils were covered by some form of health education.

37. As regards the allegation that the content of the sexual and reproductive health education provided is not comprehensive or evidence-based as well as being discriminatory, the Government refers first of all to the Constitution of the Republic of Croatia and to its Article 14 which guarantees the principle of equality of all citizens before the law by stipulating that everyone in the Republic of Croatia has rights and freedoms regardless of their race, skin colour, gender, language, religion, political or other affiliation, national or social origin, property, birth, education, social standing or other characteristics.

38. Moreover, the Government submits that the content and information on sexual and reproductive health available within the framework of the national curriculum includes all the topics recommended by regional and international bodies for effective protection and promotion of health among youth. It maintains that all the topics in the national curriculum are taught in compliance with the legislation pertaining to gender equality and same-sex unions, as well as with Croatia's international and regional obligations. It refers in this respect to the Act on Primary and Secondary Education Textbooks as well as to the adoption in 2007 of a new Textbook Standard which sets out, among other things, clear criteria for promoting gender equality and eradicating any form of discrimination. The Government also states that the complaint is out of date in so far as reference is made to the 2004 Study on the National Curriculum and indicates that since then all course contents, including on sexual and reproductive health education, have been brought up to date and harmonised with the most recent scientific advances and accomplishments.

39. The Government denies that the elective Catholic religious teachings course is biased and discriminatory and submits that it represents interpretations of modern Catholic teachings on specific topics which are tolerant and never interferes with the personal decisions of individuals (when dealing with sexual affiliation or use of contraceptives). The Government emphasises that elective religious teachings courses are organised not only for Catholics but also for those of the Christian Orthodox and Muslim faith. With respect to the TeenStar programme the Government points out that each school, based on its work programme, may independently select their extracurricular programmes. In the school year 2007/2008 the TeenStar programme was implemented in 5 out of a total of 871 primary schools. It further states that medical experts had no objection to the implementation of this programme. Finally, the Government contends that the health education programmes of the GROZD and Forum associations which were selected for pilot experimentation following a Public Call for Proposals and a comprehensive scientific debate are fully compliant with domestic law as well as Croatia's international obligations.

40. With respect to the qualifications of teachers the Government submits that great care is taken to ensure that teachers, including sexual education teachers, have appropriate qualifications, both in regular and extra-curricular subjects. It is noted that continuous professional training of teachers is free of charge and mandatory for teachers. According to the Government, the ETTA is currently providing professional training of teachers who are to deliver education within the context of the pilot health education programmes GROZD and Forum. It is further mentioned that in 2006/2007 the National Institute of Public Health provided training on HIV/AIDS prevention to 6,617 teachers.

41. The Government submits that monitoring and evaluation are ensured in respect of all contents of regular and extracurricular school subjects, including those pertaining to sexual and reproductive health education. In particular, the Government states that the National Centre for External Evaluation of Education, a body responsible for monitoring and external evaluation of the work and achievements of schools, was established in 2004, and since 2006 state examinations have been carried out as a system of permanent external evaluation and quality control, which, among other academic achievements, assesses students' progress in health education.

42. The Government finally denies the allegation that lack of sexual and reproductive health education results in girls being exposed to greater health risks when compared to boys. It states that information in this field is equally important for all children, regardless of age, and it must be available to all. Moreover, reference is made to health statistics which indicates that HIV/AIDS prevalence in Croatia among adults is comparatively low at less than 0.1%, with a rate of 14.5 diagnosed infections per one million people in the general population, that the age group 15-24 accounts for only 8% of the total number of new HIV infections in Croatia and that Croatia figures among those countries which have the lowest rate of HIV cases. WHO has deemed Croatia to be a low priority zone with regard to the spread of HIV/AIDS. Croatia also has stable epidemiological rates with strong primary and secondary prevention efforts which have kept the risk of outbreak relatively low. Finally, there is a decreasing trend in the number of births in the 15-19 age group and the number of legally induced abortions in this age group has been fairly stable over the last 5-year period.

B – Assessment of the Committee

43. The Committee recalls that under Article 11§2 States must provide education and aim to raise public awareness in respect of health-related matters. States must adopt concrete measures with a view to implementing a public education policy which is directed towards the population at large as well as particular population groups which are affected by specific health problems. The measures taken should seek to prevent activities that are damaging to health, such as smoking, excessive alcohol consumption and the use of drugs, and encourage the development of a sense of individual responsibility in respect of matters such as healthy diet, sexual and reproductive health and the environment (Conclusions XV-2, Addendum, Slovakia).

44. The Committee considers that apart from the family framework, the most appropriate structure for the provision of 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. In this regard, the Committee refers in particular to 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.

45. The Committee has previously stated 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. (Conclusions XV-2, Belgium, Conclusions 2003, Slovenia).

46. More specifically, in the context of Article 11§2 and the instant case, the Committee understands sexual and reproductive health education as a process aimed at developing the capacity of children and young people to understand their sexuality in its biological, psychological, socio-cultural and reproductive dimensions which will enable them to make responsible decisions with regard to sexual and reproductive health behaviour.

47. 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-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 it 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.

48. 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.

49. States may also encourage the provision of elective and extracurricular courses, within or outside the school setting or via out-of-school programmes, for school children relating to sexual and reproductive health. These courses may constitute a part of overall public health education policy. However, when such courses are optional and participation is dependent upon the free choice of children and their parents, the Committee does not consider that they should be subject to the same requirements as to content, form and substance which exist in respect of ordinary curricular activities. However, where these courses are approved and/or wholly or partially funded by the Government and/or invoked by the State Party as an element in fulfilling its obligations under the Charter, the sexual and reproductive health education taught through them must remain objective and must comply with the non-discrimination principle.

50. The Committee wishes to emphasise that the obligation under Article 11§2 as defined above does not in its view affect the rights of parents to enlighten and advise their children, to exercise with regard to their children natural parental functions as educators, or to guide their children on a path in line with the parents own religious or philosophical convictions (see European Court of Human Rights, Case of Kjeldsen, Busk Madsen and Pedersen v. Denmark, Judgment of 7 December 1976).

Sexual and reproductive health education as a part of the school curriculum

51. The Committee notes that in Croatia health education, including sexual and reproductive health education, is taught within the ordinary curriculum throughout the period of schooling (primary and secondary) as an integrated part of different school subjects. Based on its understanding of the general situation in the States Parties to Charter in this field, the Committee observes that while it is rare for sexual and reproductive health education to be covered across all school subjects, it is quite common for such education to be provided through instruction in several different subjects. For example, Biology lessons are often used to cover the biological aspects of reproductive health while Religious and/or Moral Philosophy classes often address its moral and ethical aspects.

52. The Committee notes the argument of the complainant organisation that this integrated approach leads to incoherence and fragmentation and it also notes the apparent preference of the complainant organisation for “a dedicated course of instruction” in sexual and reproductive health education. However, in general the Committee considers that the States Parties have a margin of discretion as regards the choice of organisational structure for the delivery of this type of education and it does not find that the complainant organisation has convincingly demonstrated the existence of a sufficiently clear causal link between the “integrated” approach and the alleged consequences of the inadequacy of the education.

Adequacy of sexual and reproductive health education in quantitative terms

53. The Committee notes the estimation of the complainant organisation that the maximum number of hours devoted to potentially relevant sexual and reproductive health topics throughout the period of schooling (primary and secondary) amounts to no more than 42 hours. This estimate is not contested by Government, which points out however that provision may vary from school to school. According to the Government the national curriculum allows for an increase in the number of class sessions in order to accommodate the vertical and horizontal integration of curricular contents and to take into account the pupil workload at the specific school. The Government also indicates that the recently adopted Curriculum for Primary Schools in fact has led to an increase in the number of hours of health education.

54. In assessing the adequacy of the education provided in quantitative terms, the Committee does not determine in the abstract what is the minimum number of hours per school year that should be dedicated to sexual and reproductive health education, but will consider the situation on a case by case basis taking into account contextual and implementation-related indicators relating to sexual and reproductive health among young people such as the prevalence of sexually transmitted diseases, teenage pregnancies, the use of contraception, HIV/AIDS rates and others. The Committee notes in the instant case that a limited number of hours appear to have been allocated to sexual and reproductive health topics. However, it does not consider that the complainant organisation has adequately demonstrated that the education provided cannot reasonably fulfil the aim of raising awareness about sexual and reproductive health to the extent required by Article 11§2 of the Charter.

Sexual and reproductive health indicators

55. The Committee notes in this context that the main standard indicators of reproductive health amongst the general population do not appear to establish that the situation in Croatia as regards sexual and reproductive health is notably worse than is the case in many other European countries. The incidence of sexually spread diseases appears to be relatively low when compared to some other European countries (syphilis incidence of 1.36 per 100,000 in 2007 compared to an EU average of 4.04, gonococcal infection incidence of 0.66 per 100,000 in 2007 compared to an EU average of 7.63). The same applies to the incidence of HIV and AIDS (HIV incidence of 1.49 per 100,000 in Croatia in 2006 compared to an EU average of 5.75, AIDS incidence of 0.4504 per 100,000 compared to an EU average of 1.37).² According to Government data, the birth rate in the 15-19 years age group was 13.8 per 1,000 population in 2007 which is above the EU average, but not particularly high by international standards.

² European Health Database. WHO Europe.

56. The Committee notes from a recent study of health behaviour among school-age children in 41 countries in the European Region and North America³ that the percentage of 15-year olds reporting experience of sexual intercourse in Croatia is slightly below the average figure reported across all the countries examined both for boys and girls. As regards contraceptive pill use, the percentage of 15-year olds in Croatia reporting such use is well below the reported average across the countries examined, but nevertheless still equal to or higher than several other southern and eastern European countries (Spain, Greece, Latvia, Slovakia, Russia and others). With respect to condom use during the last reported intercourse, 84% of girls aged 15 and 82% of boys aged 15 in Croatia reported such use, compared to a lower average across the countries of 72% and 81%, respectively.

Teacher training and monitoring/evaluation

57. It is not disputed between the parties that Croatia has established a system for training of teachers as well as for monitoring and evaluation of the education provided in schools, including health education. The Committee notes the claim of the complainant organisation that teacher qualifications are insufficient where sexual and reproductive health topics are concerned and that the monitoring bodies are understaffed and unable to make qualitative assessments of the health education provided. It also notes the inherent flaws in the evaluation mechanisms (such as lack of objectivity, transparency, publicity, etc.) which have been highlighted by the complainant organisation. However, having regard to the arguments put forward by the parties, the Committee does not find the situation to be incompatible with Article 11§2 of the Charter.

Content of the educational material

58. The Committee considers that it is not its role to assess in fine detail the content of national school curricula. The setting and planning of such curricula mainly involves 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.

59. 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, in the same way as it has when considering the quantitative aspects of the education provided, 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 (see paragraphs 55-56). 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

³ Health Behaviour in School-aged Children (HBSC) 2005/2006. A World Health Organization Collaborative Cross-national Study.

curriculum in general is sufficiently deficient so as to fall short of the substantive requirements imposed by Article 11§2.

60. 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, distorted, reprehensible 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.

61. 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. The reproduction of such state-sanctioned material in educational materials not alone has a discriminatory and demeaning impact upon persons of non-heterosexual orientation throughout Croatian society, but also presents a distorted picture of

human sexuality to the children exposed to this material. By permitting sexual and reproductive health education to become a tool for reinforcing demeaning stereotypes, the authorities have failed to discharge their positive obligation not to discriminate in the provision of such education, and have also failed to take steps to ensure the provision of objective and non-exclusionary health education.

62. With regard to the elective Catholic religious teachings course and the extracurricular courses referred to by the complainant organisation, the Committee notes that although they are state-approved they do not replace or substitute for ordinary curricular education and they are freely chosen by parents and their children. As noted above at paragraph 49, such optional courses will not be subject to the same level of scrutiny by the Committee as are ordinary curricular activities that receive direct state sanction and approval. In the light of its finding above concerning the ordinary curriculum, the Committee does not consider it necessary in the present case to examine where the exact boundaries lie for what is acceptable under the Charter where these optional courses are concerned. However, the Committee nevertheless draws the attention of the authorities to their positive obligation to ensure through the domestic legal system that state-approved sexual and reproductive health education is objective and non-discriminatory.

63. As regards INTERIGHTS' claim that there is a "distinct possibility" that certain on-going extracurricular or experimental activities (*in casu* the GROZD programme) may eventually be adopted as the basis for the ordinary school curriculum in Croatia, the Committee observes that this argument belongs in the realm of the hypothetical. Notwithstanding the experimental application of the programme in a limited number of schools, according to the information at the Committee's disposal the nature and content of the programme to be implemented remains to be finally decided and it cannot therefore be a basis for the Committee to make a finding of a violation of the Charter at present.

64. The claim by the complainant organisation that Croatian school textbooks in general perpetuate certain gender stereotypes in the Committee's view remains imprecise and undeveloped. While the examples quoted by the complainant organisation might raise doubts about the gender-sensitivity and appropriateness of the educational material used, they do not amount in themselves to a violation of Article 11§2 of the Charter. However, once again, the Committee draws the attention of the authorities to their positive obligation to ensure that state-approved sexual and reproductive health education is objective and non-discriminatory.

65. Finally, with respect to INTERIGHTS' allegation that the quantitative and qualitative inadequacy of the sexual and reproductive health education provided as part of the ordinary school curriculum leaves girls vulnerable to certain health risks amounting to discrimination on grounds of sex, it follows from the conclusions above that the Committee cannot concur. The evidence at the Committee's disposal is insufficient to justify a conclusion that the sexual and reproductive health education overall is inadequate under Article 11§2 and in any event it has not been established by the statistical evidence or otherwise that Croatian girls are inordinately exposed to certain health risks.

66. The Committee therefore holds that the discriminatory statements contained in educational material used in the ordinary curriculum constitute a violation of Article 11§2 in the light of the non-discrimination clause.

THE ALLEGED VIOLATION OF ARTICLE 16 TAKEN ALONE AND IN THE LIGHT OF THE NON-DISCRIMINATION CLAUSE OF THE PREAMBLE TO THE EUROPEAN SOCIAL CHARTER

67. Article 16 of the Charter reads:

Article 16 - The right of the family to social, legal and economic protection

Part I: “The family as a fundamental unit of society has the right to appropriate social, legal and economic protection to ensure its full development.”

Part II: “With a view to ensuring the necessary conditions for the full development of the family, which is a fundamental unit of society, the Contracting Parties undertake to promote the economic, legal and social protection of family life by such means as social and family benefits, fiscal arrangements, provision of family housing, benefits for the newly married, and other appropriate means.”

68. The non-discrimination clause of the Preamble to the Charter reads:

Preamble

“[...]

Considering that the enjoyment of social rights should be secured without discrimination on grounds of race, colour, sex, religion, political opinion, national extraction or social origin;

[...]”

A – Submissions of the parties

a. The complainant organisation

69. INTERIGHTS submits that a significant amount of the content of the teaching curriculum concerning family models, sexuality and sexual behaviour being offered in schools where sexual and reproductive health education is taught is directly at odds with domestic legislation on Gender Equality and Same Sex Civil Partnerships as well as relevant international standards. Heterosexual relationships are presented as the “normal” form of relationship implying that any other form of relationship is abnormal. Furthermore, according to the complainant organisation the problem is accentuated in the elective Catholic religious teachings course and TeenStar programme which upholds marriage – heterosexual marital relationships – as the only meaningful and healthy context for sexual activity, as a model family structure and as a vital factor in healthy adolescent development. The implication, according to INTERIGHTS, is that family arrangements which do not fit this mould are detrimental to children’s healthy development. Moreover, the potentially mandatory GROZD programme is alleged to adopt many of the same stereotypes as the TeenStar programme and INTERIGHTS refers in this respect to criticism put forward by

Croatia's Ombudspersons for Gender Equality and Children as well as by UN's CEDAW Committee.

70. In conclusion, INTERIGHTS submits that the prejudicial stereotyping present in the content of sexual and reproductive health education, both curricular and extracurricular, in Croatia constitutes discrimination on the basis of family status and sexual orientation.

b. The respondent Government

71. The Government rejects the allegations of the complainant organisation.

B – Assessment of the Committee

72. The Committee notes that the focus of the present complaint is 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 is a question that rightly belongs under Article 11§2 and in the light of its finding above at paragraphs 60-61 it holds that no separate issues arise under Article 16 taken alone and in the light of the non-discrimination clause.

THE ALLEGED VIOLATION OF ARTICLE 17 OF THE EUROPEAN SOCIAL CHARTER

73. Article 17 of the Charter reads:

Article 17 - The right of mothers and children to social and economic protection

Part I: "Mothers and children, irrespective of marital status and family relations, have the right to appropriate social and economic protection."

Part II: "With a view to ensuring the effective exercise of the right of mothers and children to social and economic protection, the Contracting Parties will take all appropriate and necessary measures to that end, including the establishment or maintenance of appropriate institutions or services."

A – Submissions of the parties

a. The complainant organisation

74. INTERIGHTS firstly submits that Croatia's educational system fails to allocate sufficient time to sexual and reproductive health education resulting in education that is not effective. Secondly, INTERIGHTS contends that teachers of general courses part of the national curriculum generally have no formal training or experience as sexuality educators and also extracurricular programmes, such as TeenStar, have inadequate standards for teacher qualifications. Moreover, according to the complainant organisation monitoring and evaluation of sexual and reproductive health education is inadequate, inconsistent and in some cases entirely absent.

Finally, INTERIGHTS alleges that Croatia has failed to ensure transparent, objective and accountable decisionmaking in the process of selecting pilot health education programmes. More specifically this process has been characterized by lack of expertise and by appointment of inappropriate commission members; by lack of transparency in decision making; by undue influence of the Ministry of Science, Education and Sports on the Commission members; by failure to include civil society in the process and heed the opinions of its experts and Ombudspersons; and by continuing delays in implementing a scientifically accurate, non-discriminatory and gender sensitive sexual and reproductive health education programme.

b. The respondent Government

75. The Government rejects the allegations of the complainant organisation.

B – Assessment of the Committee

76. The Committee recalls that while Article 17 of the Revised European Social Charter guarantees the right of children and young persons to appropriate social, legal and economic protection, including a right to education (Article 17§1) and specifically to free primary and secondary education (Article 17§2), the scope of Article 17 of the 1961 Charter is more limited.

77. 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.

78. 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.

CONCLUSION

79. For these reasons the Committee concludes

- unanimously that there is violation of Article 11§2 in the light of the non-discrimination clause ;
- by 13 votes to 1 that that no separate issues arise under Article 16 taken alone and in the light of the non-discrimination clause;
- unanimously that no issues arise under Article 17.

Monika SCHLACHTER
Rapporteur

Polonca KONČAR
President

Régis BRILLAT
Executive secretary