



**Resolution CM/ResChS(2009)7
Collective complaint No. 45/2007
by the International Centre for the Legal Protection of Human Rights (INTERIGHTS) against Croatia**

*(Adopted by the Committee of Ministers on 21 October 2009
at the 1068th meeting of the Ministers' Deputies)*

The Committee of Ministers,¹

Having regard to Article 9 of the Additional Protocol to the European Social Charter providing for a system of collective complaints;

Taking into consideration the complaint lodged on 12 October 2007 by Interights against Croatia;

Having regard to the report transmitted by the European Committee of Social Rights, in which the situation in Croatia as regards the right to health education, in particular sexual and reproductive health education in school, is found to constitute a violation of Article 11§2 in the light of the non-discrimination clause of the Charter for the following reasons:

“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:

¹ In accordance with Article 9 of the Additional Protocol to the European Social Charter providing for a system of collective complaints, the following Contracting Parties to the European Social Charter or the revised European Social Charter have participated in the vote: Albania, Andorra, Armenia, Austria, Azerbaijan, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Moldova, Netherlands, Norway, Poland, Portugal, Romania, Slovak Republic, Slovenia, Spain, Sweden, “the former Yugoslav Republic of Macedonia”, Turkey, Ukraine and United Kingdom.

'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 stigmatise 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."

1. Takes note of the statement made by the respondent government and of the information it has communicated and welcomes the measure already taken by the Croatian authorities (see Appendix to this resolution);
2. Looks forward to Croatia reporting that, at the time of the submission of the next report concerning the relevant provisions of the European Social Charter, the situation has been brought into conformity.

Appendix to Resolution CM/ResChS(2009)7

Information provided by the Permanent Representative of Croatia during consideration by the Committee of Ministers of the report transmitted by the European Committee of Social Rights concerning Collective complaint No. 45/2007

First of all, this being the first collective complaint against Croatia, our delegation would like to express the high esteem in which my authorities hold the valuable work of the European Committee of Social Rights and to assure the latter that its reports and assessments are seriously taken into account. We would also like to welcome this opportunity, provided for by the collective complaint procedure, which allows us to give an explanation to the Committee of Ministers in relation to the complaint. Following the European Committee of Social Right's decision on the merits in the complaint and findings of the violation of Article 11§2 in the light of the non-discrimination clause in the Preamble of the Charter – which is the only violation found in relation to this collective complaint – as regards providing comprehensive or adequate sexual and reproductive health education for children and young people, we are pleased to inform the Committee of Ministers of the following:

The Croatian authorities fully share the Committee's view that statements such as the ones identified in the disputed textbook attack human dignity and have no place in sexual and reproductive health education.

Furthermore, our National Textbook Standard (stipulating various standards and criteria to which a textbook must adhere for being authorised for use) sets out, among other things, clear criteria for eradicating any form of discrimination by promoting gender equality, equality of individuals and social groups and right to diversity. Alongside with legislative reforms, education and training in promoting tolerance, awareness and respect represent one of the most powerful tools in combating all forms of phobia and discrimination and in creating a safe environment.

Bearing this in mind, we are pleased to inform the Deputies that the Croatian Ministry of Education has withdrawn the textbook in question (Biology 3: Processes of Life, authors Regula and Slijepčević, published by Školska knjiga) from the list of standard educational material, and from the school year 2009/2010 this textbook is no longer used in the ordinary curriculum.

We are of the view that this measure constitutes a direct response to the Committee's comments and that Croatia, having done this, has brought the situation into conformity with the requirements of Article 11§2 of the Charter. We therefore ask the Deputies to reflect this positive step in the resolution before us and to adopt it, thus bringing an end to the examination of the ECSR's reports in relation to this complaint.

Finally, we would like to use this opportunity to stress that our government in recent years has developed a strong non-discrimination legislative framework (e.g. Anti-discrimination law accompanied by the National Anti-discrimination Strategy, upgraded Gender Equality law, as well as the introduced notion of hate crime in the Criminal Code) which bans all forms of discrimination, including discrimination based on sexual orientation and gender identity. In addition, Croatia was one of the core group supporters of the cross-regional initiative for the UN Declaration on sexual orientation and gender identity. Last, but not least, Croatia actively participates in the work of the Council of Europe's 9-member Committee of Experts on discrimination on grounds of sexual orientation and gender identity (DH-LGBT).

We therefore reassure the Committee that we remain fully engaged in further honouring our obligations under the Charter and in pursuing the efforts to ensure the effective implementation of the rights protected by the European Social Charter."