

BETWEEN:-

Bayev, Kiselev and Alekseyev

Applicant

- v -

Russia

Respondent Government

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**THIRD-PARTY INTERVENTION SUBMISSIONS BY ARTICLE 19 and INTERRIGHTS**

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**INTRODUCTION**

1. ARTICLE 19 and INTERRIGHTS (hereinafter the interveners) welcome the opportunity to intervene in this case, by the leave of the President of the Court from 17 January 2014 pursuant to Rule 44(3) of the Rules of Court (Ref no: ECHR-LE14.8bP3). These submissions do not address the facts or merits of the applicant's case.
  2. In this submission, we argue that the right to freedom of expression encompasses the right to freely express one's sexual orientation or gender identity, as well as the freedom to seek, receive and impart information on issues related to sexual orientation or gender identity. Prohibitions that restrict these information flows, such as those at issue in the present case, discriminate against LGBT people, and deny all people their right to freedom of expression and information.
  3. Moreover, far from achieving the ostensible aim of protecting children, 'homosexual propaganda' laws undermine children's enjoyment of their rights to health and to education, depriving them of essential information, perpetuating stigmatisation and discrimination of LGBT children, and exposing them to the increased risk of homophobic violence and harassment.
  4. The importance of this case is heightened by the fact that the concept of so-called "homosexual propaganda" has gained currency not only across the Russia Federation but also throughout the former Soviet space and beyond. Laws have been adopted and subsequently repealed in Moldova, there have been attempts to institute bans in Ukraine, Hungary, Lithuania, and Armenia. Severe restrictions on the freedom of expression, association and peaceful assembly rights of LGBT people have been enacted in Nigeria and Uganda.
- I. Compatibility of "homosexual propaganda" bans and the right to freedom of expression**
- Scope of the right to freedom of expression***
5. Article 19 of the UDHR guarantees the right to freedom of expression.<sup>1</sup> This is elaborated upon and given legal force by Article 19 of the International Covenant on Civil and Political Rights (ICCPR)<sup>2</sup> which protects the right of *all people* to seek, receive, and impart information of any

form, including political discourse, commentary on one's own and on public affairs, canvassing, discussion of human rights, journalism, cultural and artistic expression, teaching, and religious discourse.<sup>3</sup> Importantly, the right protects expression that others may find deeply offensive.<sup>4</sup>

6. The right to freedom of expression and information therefore protects the right of all people, including LGBT people, to seek, receive, and impart information on all issues relating to sexual orientation and gender identity. In the 2012 case of *Fedotova v. Russia*, the Human Rights Committee (HR Committee), the monitoring body for the ICCPR, explicitly stated that this also protects the right to publicly “giv[e] expression to [their] sexual identity and seek [...] understanding for it.”<sup>5</sup> The HR Committee recently adopted similar conclusions in respect of an individual complaint regarding the denial of permission to convene a peaceful assembly expressing concern over human rights violations against LGBT people in Iran.<sup>6</sup>
7. Numerous international mechanisms have issued reports that make clear that the right to freedom of expression and information applies irrespective of sexual orientation. The UN High Commissioner on Human Rights has recommended that States:

[E]nsure that individuals can exercise their rights to freedom of expression, association and peaceful assembly in safety without discrimination on grounds of sexual orientation and gender identity.<sup>7</sup>
8. Regional human rights bodies have confirmed this understanding of the scope of the right to freedom of expression. The Court has held that the right to freedom of expression, as guaranteed by Article 10 of the Convention, is “applicable not only to ‘information’ or ‘ideas’ that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the State or any sector of the population.”<sup>8</sup> The Court has also said “there is little scope [...] for restrictions on political speech or on debate on questions of public interest.”<sup>9</sup>
9. The Court has supported this conclusion in cases relating to protests in support of LGBT rights under the protection for the right to freedom of peaceful assembly in Article 11 of the Convention. The Court affirmed that the individual and collective exercise of the right to freedom of expression encompasses the right to publicly express one's sexual orientation or gender identity.<sup>10</sup> The Court has also emphasised that “restricting a person from receiving information that others wish or may be willing to impart”<sup>11</sup> is a violation of the right to freedom of expression. Otherwise, “society would be faced with being deprived of the opportunity of hearing differing views on any question which offends the sensitivity of the majority opinion.”<sup>12</sup> The right therefore includes the right to impart and receive information about diverse sexual orientations or gender identities.
10. Also, the 2011 Council of Europe report, *Discrimination on Grounds of Sexual Orientation and Gender Identity*,<sup>13</sup> reaffirms the above points, also recommending that any discriminatory provision criminalising the dissemination and diffusion of factual information concerning sexual orientation and gender identity should be abolished.

***Restrictions on the right to freedom of expression***

11. It is well established that any limitations on the right to freedom of expression must comply with the three-part test and be: prescribed by law, pursue a legitimate aim, and meet the requirements of necessity and proportionality. Furthermore, limitations on rights must not violate guarantees against discrimination.<sup>14</sup>

12. The interveners submit that “homosexual propaganda” bans do not meet the requirement of legal prescription. In particular, they are not sufficiently clear to enable individuals to regulate their conduct in conformity with the law. Terms like “propaganda among minors” may be interpreted arbitrarily to apply to almost any positive reference to diverse sexual orientations or gender identities.
13. In the interveners view, it is important that the Court also comprehensively addresses the question of whether the measures in question pursue a legitimate aim, and are necessary in a democratic society. States that have adopted restrictions on the freedom of expression rights of LGBT people often attempt justifications premised on protecting the rights of others, children in particular, and the protection of public morals.

The protection of the rights of others, including the rights of children

14. Under international law, limitations to protect the rights of others should not be interpreted, *inter alia*, to restrict political debate.<sup>15</sup> Restrictions must be further supported by evidence and should not be speculative; for example, the Court has held that there was no scientific or social data “suggesting that the mere mention of homosexuality, or open public debate about sexual minorities’ social status, would adversely affect children or ‘vulnerable adults.’”<sup>16</sup>
15. In cases of invoking protection of public health, international standards maintain that such measures must be “both evidence-based and proportionate to ensure respect of human rights.”<sup>17</sup> States should “refrain” from employing criminal laws and legal restrictions that aim to regulate public health if they are neither evidence-based nor proportionate. Restrictions on the free flow of information are considered more likely to harm an individual or group’s health rather than advance it.

The protection of public morals

16. The State bears the burden of demonstrating that any limitation to protect “public morals” is *essential* to the maintenance of respect for fundamental values of the community.<sup>18</sup> While States enjoy a margin of appreciation in this regard, this discretionary leeway does not permit “public morals” to be invoked to “justify discriminatory practices”<sup>19</sup> or “to perpetuate prejudice or promote intolerance.”<sup>20</sup>
17. International human rights bodies have noted that concepts of morality are constantly evolving,<sup>21</sup> that any limitation “must be based on principles not deriving exclusively from a single tradition”,<sup>22</sup> and “must be understood in the light of the universality of human rights and the principle of non-discrimination.”<sup>23</sup> Where public morality has been invoked to restrict the free expression rights of LGBT people, the UN High Commissioner for Human Rights has warned of “privileging the antagonists” rather than those claiming rights.<sup>24</sup>

Necessity and proportionality

18. For a limitation on the right to freedom of expression or freedom of peaceful assembly to be considered necessary, States must demonstrate in a “specific and individualised fashion the precise nature of the threat, and the necessity and proportionality of the specific action taken, in particular by establishing a direct and immediate connection between the expression and the threat.”<sup>25</sup> It is the view of the interveners that the restrictions on freedom of expression in the present case are not necessary because no threat to a legitimate State interest exists. It is therefore impossible to evidence such a threat.

## **II. Negative impact of “homosexual propaganda” bans on children’s human rights**

19. There is no basis for concluding that the type of information targeted by the “homosexual propaganda” bans can be harmful to children’s rights and development. This consideration alone makes the restrictions incompatible with Article 10(2) of the Convention.
20. It is however important to recognise that such information is actually *essential* for children’s health and development, thereby making the restrictions not only unnecessary but also actively damaging to children.<sup>26</sup> Far from protecting them, “homosexual propaganda” laws undermine children’s rights to health and to education. They also exclude the possibility of effective measures to protect LGBT students from homophobic bullying and stigmatisation. Worse still, they *encourage* bullying and stigmatisation and as such are detrimental to children’s physical and mental integrity protected by Articles 3 and 8 of the Convention.
21. The negative impact of “homosexual propaganda” bans undermines the human rights of children it ostensibly seeks to protect, should be considered as undoubtedly relevant to the assessment of the legislation’s compatibility with Article 10(2).<sup>27</sup>

### ***The right to health***

22. The right to health is guaranteed in Article 24 of the Convention on the Rights of the Child (CRC), as well as Article 12 of the International Convention on Economic, Social and Cultural Rights (ICESCR). “Homosexual propaganda’ bans undermine children’s right to health in at least two distinct ways. First, they restrict children in their access to sexual and reproductive health information and education. Second, they reinforce the discrimination of LGBT children which in itself is widely regarded as a health risk factor.
23. Equal access to comprehensive sexual and reproductive health information and education is widely recognised to be included in the right to health.<sup>28</sup> In particular, it has been emphasised by the relevant UN human rights treaty bodies that the right to health requires that states “refrain from censoring, withholding or intentionally misrepresenting health-related information, including sexual education and information.”<sup>29</sup> It is also important that access is not denied to some categories of children in a discriminatory manner. For example, the Committee on the Rights of the Child (CR Committee) has stated that effective HIV prevention programmes “are only those that acknowledge the realities of the lives of adolescents, while addressing sexuality by ensuring equal access to appropriate information, life skills, and to preventive measures.”<sup>30</sup>
24. The right to health is also guaranteed in the European Social Charter and has been interpreted by the European Committee of Social Rights (ECSR) to include the provision of sexual and reproductive health education within the ordinary school curriculum.<sup>31</sup> The content of this education must be objective, based on contemporary scientific evidence and must not involve censoring, withholding or intentionally misrepresenting information.<sup>32</sup> This education, including the way it is delivered and the content of the teaching material, must be provided to schoolchildren without discrimination on any ground.<sup>33</sup> The application of the non-discrimination principle is twofold: children must not be discriminated in accessing sexual and reproductive health education, and such education must 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.”<sup>34</sup>
25. Discrimination is widely regarded as important factor in children’s ability to enjoy the right to health. The CR Committee has observed that “[a]dolescents who are subject to discrimination are more vulnerable to abuse, other types of violence and exploitation, and their health and development are put at greater risk”<sup>35</sup> and that full realisation of the right to health of children

requires that “children’s health is not undermined as a result of discrimination, which is a significant factor contributing to vulnerability.”<sup>36</sup> It has also warned that discrimination heightens the vulnerability of children to HIV.<sup>37</sup>

26. The ECSR has ruled that the right to health involves the state’s “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.”<sup>38</sup> With reference to sexual orientation specifically, “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.”<sup>39</sup>
27. “Homosexual propaganda” bans are expressly designed to promote and protect the idea that heterosexuality is the only form of sexuality, which conforms to social norms and values. This cannot but contribute to the stigmatisation and discrimination of LGBT children. Indeed, the UN Special Rapporteur on the right to health recognised this much when he stated that laws censoring discussions of homosexuality in the classroom “fuel stigma and discrimination of vulnerable minorities” and “perpetuate false and negative stereotypes concerning sexuality, alienate students of different sexual orientations and prevent students from making fully informed decisions regarding their sexual and reproductive health.”<sup>40</sup>

#### ***The right to education***

28. The right to education is enshrined in Articles 28 and 29 of the CRC and Article 13 of the ICESCR. It is also guaranteed by Article 2 of Protocol 1 of the Convention. Recommendation CM/Rec(2010)5 of the Committee of Ministers specifies that, in the light of “the over-riding interests of the child”, states should ensure that the right to education is “effectively enjoyed without discrimination on grounds of sexual orientation or sexual identity.” This requirement includes “safeguarding the right of children and youth to education in a safe environment, free from violence, bullying, social exclusion or other forms discrimination and degrading treatment related to sexual orientation or gender identity.”<sup>41</sup>
29. To this end, states should take appropriate measures to promote mutual tolerance and respect in schools. Such measures include providing pupils with “objective information with respect to sexual orientation and gender identity” as well as “necessary information, protection and support to enable them to live in accordance with their sexual orientation and gender identity.”<sup>42</sup>
30. A similar interpretation of the right to education is advanced in the Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity, a document adopted by a distinguished group of human rights experts.<sup>43</sup> Principle 16, which has been fully endorsed by the UN Special Rapporteur on the right to education,<sup>44</sup> lists a number of measures states shall adopt to ensure everyone’s enjoyment of the right to education “without discrimination on the basis of, and taking into account, their sexual orientation and sexual identity.” These measures include, among others, education methods, curricula and resources serving to enhance understanding of and respect for diverse sexual orientations and gender identities, including the particular needs of LGBT students and their parents. They also include laws and policies providing adequate protection for LGBT students, staff and teachers against all forms of social exclusion and violence within the school environment, including bullying and harassment.

31. “Homosexual propaganda” bans make it impossible for schools, educational authorities, and charities to implement any of the measures required by the above standards. Such laws, however, do not simply deny LGBT children any meaningful support and protection. They also directly encourage their discrimination, stigmatisation, and bullying by expressly endorsing heterosexuality as the only acceptable social norm and actively perpetuating intolerance towards non-heterosexual orientations and relationships. How far such legislation can be taken in imposing heterosexual normativity and excluding information promoting tolerance and equality is suggested by a background document which was published by a Russian telecommunication authority in the process of developing an official guidance on information harmful to the health and development of children.<sup>45</sup> According to criteria set out in this document, information prohibited by the federal legislation on the propaganda of “non-traditional relationships” would include, inter alia, any representation of non-heterosexual families and relationships which is approving or even simply non-judgmental in tone, as well as any portraying of LGBT person as a role model.<sup>46</sup>
32. Stigmatisation and bullying lead to “depression and other health problems and contribute to truancy, absenteeism, children being forced out of school and, in extreme cases, attempted or actual suicide.”<sup>47</sup>
33. “Homosexual propaganda” bans are also detrimental to children’s education because they are incompatible with adequate sexual and reproductive health education. The right to comprehensive sexual education is an integral part of the right to education,<sup>48</sup> just as it is of the right to health. The UN Special Rapporteur on the right to education has emphasised that sexual education must pay special attention to diversity, respectful of a person’s “right to deal with his or her own sexuality without being discriminated against on grounds of sexual orientation or gender identity”, adding that it should serve as a “tool for ending discrimination against persons of diverse sexual orientation.”<sup>49</sup> Similarly, the UN High Commissioner for Human Rights has stated that the right to education “includes the right to receive comprehensive, accurate and age-appropriate information regarding human sexuality in order to ensure young people have access to information needed to lead healthy lives, make informed decisions and protect themselves and others from sexually-transmitted infections.”<sup>50</sup>

***Homophobic bullying***

34. LGBT children are particularly vulnerable to being bullied at school because of their sexual identify. Homophobic bullying can take many forms from teasing, taunting and name calling to psychological manipulation, social exclusion and physical violence.<sup>51</sup> In virtually every country where reliable figures on the prevalence of homophobic bullying are available, a majority of LGBT pupils reported to have experienced it in some form.<sup>52</sup> For instance, according to a survey by a leading UK anti-bullying charity, bullying in Britain’s schools is experienced by 55 per cent of LGBT young people.<sup>53</sup>
35. Bullying affects LGBT children’s education, causing reduced school attendance, early school drop out and poorer academic performance and achievement.<sup>54</sup> For example, the aforementioned UK study reports that 44 per cent of LGBT pupils who experience homophobic bullying skip school because of it and 32 per cent of such pupils change their plans for future education because of it.<sup>55</sup>
36. Bullying has also a profound effect on LGBT pupils’ mental well-being. Research shows a clear link between repeated long-term homophobic bullying at school and depression, anxiety, loss of confidence, withdrawal, guilt, and sleep disturbance.<sup>56</sup> Homophobic bullying also leads to substantially higher rates of self-harming and suicide attempts among LGBT pupils. In the UK,

nearly one in four LGBT young people have tried to take their own life. This compares to the seven per cent figure among all young people in general. More than half of LGBT young people deliberately harm themselves, compared to one in ten young people in general.<sup>57</sup>

37. Under Article 3 and 8 of the Convention, the state has a positive obligation to protect vulnerable children from bullying by their peers.<sup>58</sup> In *Dordevic v. Croatia*, this Court found that Article 3 required of the national authorities to have a systematic approach to dealing with the sustained mental and physical bullying of a vulnerable child and to adopt adequate and comprehensive measures, such monitoring mechanisms, the involvement of social services and counseling.<sup>59</sup>
38. Protection of LGBT children from discrimination is at the heart of the systematic approach needed.<sup>60</sup> The CR Committee has explained that the state's obligation to protect children from violence requires addressing "discrimination against vulnerable or marginalized groups of children" and making "proactive efforts to ensure that such children are assured their right to protection on an equal basis with other children."<sup>61</sup> Similarly, the UN High Commissioner for Human Rights has stated that dealing with bullying "requires concerted efforts from schools and education authorities and integration of principles of non-discrimination and diversity in school curricula and discourse."<sup>62</sup>
39. "Homosexual propaganda" bans are also incompatible with policies and measures aimed at promotion of non-discrimination and inclusion for LGBT children. In fact, their effect is the opposite of that. As the CR Committee has recently commented on specifically on this legislation in Russia, it encourages stigmatisation of and discrimination against LGBT children and leads to their persecution, including abuse and violence.<sup>63</sup>

## **CONCLUSION**

40. Restrictions imposed by 'homosexual propaganda' laws cannot be justified under Article 10(2) of the ECHR and are equally incompatible with other international standards in the field of freedom of expression.
41. The intrinsic vagueness and overreaching scope of the language of such laws enable their arbitrary application which can lead to penalising almost any positive or non-judgmental information about LGBT persons. It is clear that they do not meet the very first requirement under Article 10(2) analysis, namely, that of legal prescription.
42. However, limiting the examination of these laws to the quality of law criterion would create a false impression that, were they formulated with a higher degree of precision, they might be compatible with the Convention. This intervention is designed to assist the Court in a more extended analysis of "homosexual propaganda" bans in order to recognise the full extent of its pernicious impact on the rights guaranteed in the Convention. The laws in question are inherently discriminatory and damaging to the rights and interest of children who they purport to protect. By restricting the free flow of information, and institutionalising discrimination and stigmatisation, the "homosexual propaganda" bans violate children's rights to health and to education and put children at a higher risk of bullying and social isolation. Moreover, they perpetuate general discrimination and stigmatisation of LGBT persons, whether they are children or adults.

28 February 2014

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<sup>1</sup>UN General Assembly Resolution 217A(III), adopted on 10 December 1948.

<sup>2</sup>*International Covenant on Civil and Political Rights, 16 December 1966, UN Treaty Series, vol. 999, p. 171.*

<sup>3</sup> General Comment No. 34, HR Committee, CCPR/C/GC/34, 12 September 2011, para. 11.

<sup>4</sup>*Ibid.* The scope of Article 19(2) of the ICCPR “embraces even expression that may be regarded as deeply offensive.”

<sup>5</sup>*Fedotova v. Russian Federation*, CCPR/C/106/D/1932/2010, Communication No. 1932/2010, 30 November 2012, para. 10.7.

<sup>6</sup>*Alexseyev v. Russian Federation*, CCPR/C/109/D/1873/2009, Communication No. 1873/2009, 5 November 2013, para. 9.6.

<sup>7</sup> Report of the UN High Commissioner for Human Rights, Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity, A/HRC/19/41, 17 November 2011, para. 84(f).

<sup>8</sup>*Handyside v. UK*, Application No. 5493/72, Judgment of 7 December 1976, para. 49

<sup>9</sup> *Öllinger v Austria*, European Court of Human Rights, Application No. 76900/01, Judgment of 29 June 2006, para. 38.

<sup>10</sup>*Alekseyev v. Russia*, European Court of Human Rights, Applications nos. 4916/07, 25924/08 and 14599/09, 21 October 2010, which concerned a series of refusals to permit pride marches over several years in Moscow. The Court recognised the purpose of the marches and picketing was to promote “respect for human rights ... and to call for tolerance towards sexual minorities.” It found that the reason the authorities objected to this was “the very fact that [the applicants] wished to openly identify themselves as gay men or lesbians, individually and as a group.”

<sup>11</sup> *Leander v. Sweden*, Application No. 9248, 26 March 1987, para. 74; *Sirbu et al v. Moldova*, Application Nos. 73562/01, 73565/01, 73712/01, 73744/01, 73972/01 and 73973/01, 15 June 2004, para. 18.

<sup>12</sup>*Alekseyev, op. cit.*, para. 77.

<sup>13</sup> Discrimination on Grounds of Sexual Orientation and Gender Identity, 2<sup>nd</sup> edition, 2011.

<sup>14</sup> The Siracusa Principles on the Limitation and Derogation Provisions in the ICCPR, part I.A.2 and I.A.9, UN Commission on Human Rights, 28 September 1984, E/CN.4/1985/4.

<sup>15</sup> General Comment No. 34, *op. cit.*, para. 28.

<sup>16</sup>*Alekseyev, op. cit.*, para. 86.

<sup>17</sup> Interim report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, 3 August 2011, A/66/254, para. 18.

<sup>18</sup> The Siracusa Principles, *op. cit.*

<sup>19</sup> *Ibid.* The HR Committee also asserted that morality based limitations on rights “must be understood in the light of the universality of human rights and the principle of non-discrimination; General Comment No. 34, *op. cit.*, para. 32.

<sup>20</sup> *Hertzberg et al v. Finland*, Communication No. 61/1979, individual opinion by Committee members Opsahl, Lallah and Tarnopolsky, 2 April 1982. The decision of the majority in *Hertzberg* should now be read in light of the decision in *Fedotova, op. cit.*

<sup>21</sup> The Siracusa Principles, *op. cit.* See also: *Muller vs. Switzerland*, *op. cit.*, para. 35, in which the ECtHR equated the concept of “public morality” with safeguarding the general population from obscene materials. In *Alekseyev, op. cit.*, in finding that the limitation placed on the right to freedom of peaceful assembly was not necessary in a democratic society, the ECtHR noted para. 82 that “[a]t no stage was it suggested that the event would involve any graphic demonstration of obscenity of a type comparable to the exhibition in the case of *Müller and Others* referred to by the Government... the participants had not intended to exhibit nudity, engage in sexually provocative behaviour or criticise public morals or religious views.” Citing comments of the Mayor of Moscow, the ECtHR exposed the public morality argument as cover for the fact that what the authorities found objectionable was “the very fact that they [the demonstrators] wishes to openly identify themselves as gay men or lesbians, individually and as a group.” The Court therefore found that the violation of the applicant’s Article 11 rights also constituted a violation of the guarantee against discrimination under Article 14.

<sup>22</sup> General Comment No. 34, *op. cit.*, para. 32.

<sup>23</sup> *Ibid.*

<sup>24</sup> Report of the United Nations High Commissioner for Human Rights, Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity, *op. cit.*, para. 64.



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- <sup>25</sup> General Comment No. 34, *op. cit.*, para 35; also: *Shin v. Republic of Korea*, Communication No. 926/2000, HR Committee, 16 March 2004, para. 7.3.
- <sup>26</sup> A recent Parliamentary Assembly for the Council of Europe report observes that 'as medical research indicates that most children begin experiencing feelings of sexual attraction some time during late childhood or early adolescence, it would be important for their balanced development to know that there are different sexual orientations and that nobody should be stigmatised on this account.' PACE Report on Tackling discrimination on the grounds of sexual orientation and gender identity (2013) Doc. 13223, para. 52
- <sup>27</sup> See: *Open Door and Dublin Well Women v. Ireland*, Application nos. 14234/88 and 14235/88, judgment of 29 October 1992, para. 77 (the Court considered that the risks to the health of pregnant women created by the contested injunction were 'certainly legitimate factors to take into consideration' in assessing its proportionality under Article 10). Similarly, in *Kiyutin v. Russia* (application no. 2700/10, judgment of 10 March 2011, para. 71), the Court did not stop at establishing that the challenged discriminatory restrictions were ineffective in serving the declared aim of protecting public health. It also noted that they might be actually harmful to the country's public health.
- <sup>28</sup> See: Committee on Economic Social and Cultural Rights (CESCR), General Comment No. 14 (2000), E/C/12/2000/4, para. 11. In the specific context of adolescent health, the CR Committee stated in its General Comment No. 4 that the state 'should provide adolescents with access to sexual and reproductive information, including on family planning and contraceptives, the dangers of early pregnancy, the prevention of HIV/AIDS and the prevention and treatment of sexually transmitted diseases', para. 28
- <sup>29</sup> CESCR General Comment No. 14, para. 34. In the context of protection of adolescents' health, the CRC echoed this requirement in its General Comment No 4, para. 6
- <sup>30</sup> See: CR Committee, General Comment No. 3 (2003) on HIV/AIDS and the rights of the child, CRC/GC/2003/3, para. 11. For a more general statement on the prohibition of discrimination on grounds of sexual orientation in the context of access to health care and 'underlying determinants of health' (which include sexual education), see CESCR General Comment no. 14 (2000), para. 18.
- <sup>31</sup> *International Centre for the Legal Protection of Human Rights (INTERIGHTS) v Croatia*, Complaint No. 45/2007, para. 47.
- <sup>32</sup> *Ibid.*
- <sup>33</sup> *Ibid.*, para. 48
- <sup>34</sup> *Ibid.*
- <sup>35</sup> CR Committee, General Comment No.4 (2003), on Adolescent health and development, CRC/GC/2003/4, para. 6.
- <sup>36</sup> CR Committee, General Comment No. 15 (2013), on the right of the child to the enjoyment of the highest attainable standard of health, CRC/C/GC/15, para. 8 (the CRC is explicit that sexual orientation is among proscribed grounds for discrimination).
- <sup>37</sup> CR Committee, General Comment No. 3, para. 7.
- <sup>38</sup> *INTERIGHTS v. Croatia, op. cit.*, at para. 61
- <sup>39</sup> *Ibid.*
- <sup>40</sup> Report of the UN Special Rapporteur on the right to health (2011) A/66/254, para. 59
- <sup>41</sup> Recommendation CM/Rec(2010)5 of the Committee of Ministers to member states on measure on combat discrimination on grounds of sexual orientation or gender identity, para. 31.
- <sup>42</sup> *Ibid.*, para. 32.
- <sup>43</sup> Available at: [www.yogyakartaprinciples.org/principles\\_en.pdf](http://www.yogyakartaprinciples.org/principles_en.pdf)
- <sup>44</sup> Report of the UN Special Rapporteur on the right to education (2010) A/65/162, para. 23.
- <sup>45</sup> Criteria for online content harmful to children's health and development, available at: [rkn.gov.ru/docs/Razdel\\_6.pdf](http://rkn.gov.ru/docs/Razdel_6.pdf)
- <sup>46</sup> *Ibid.*, at p. 56
- <sup>47</sup> UN High Commissioner for Human Rights, Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity (2011), A/HRC/19/41, para. 60. See also UNESCO, Good Policy and practice in HIV and Health Education (Booklet 8), Education Sector Responses to Homophobic Bullying, pp. 20 and 22.
- <sup>48</sup> See Report of the Special Rapporteur on the right to education 2010, paras 19-20.
- <sup>49</sup> *Ibid.*, para. 23.
- <sup>50</sup> UNHCHR Report 2011, para. 61
- <sup>51</sup> See UNESCO Booklet, pp. 13 and 16.
- <sup>52</sup> For an overview of available country data, see UNESCO Booklet, pp.18-19. The high prevalence of homophobic bullying has been also highlighted by the UN High Commissioner for Human Rights (UNHCHR Report 2011, para. 58).
- <sup>53</sup> Stonewall, The School Report: The experiences of gay young people in Britain's schools in 2012, p. 4
- <sup>54</sup> UNESCO Booklet, p. 20.
- <sup>55</sup> The School Report, p. 4.

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<sup>56</sup> UNESCO Booklet, p. 22.

<sup>57</sup> The School Report, p. 4

<sup>58</sup> *Dordevic v Croatia*, application no. 41256/10, judgment of 24 July 2012, para. 143

<sup>59</sup> *Ibid.*, para. 148

<sup>60</sup> See CR Committee, General Comment No. 13 (2011) on Article 19: freedom from all forms of violence, CRC/C/GC/13, para. 11 'protection of children against violence requires a holistic approach, non-discrimination being part of it'.

<sup>61</sup> *Ibid.*, para. 60. Vulnerable children include LGBT children (para 72).

<sup>62</sup> UNHCHR Report 2011, para 58

<sup>63</sup> CR Committee, Concluding observations on the combined fourth and fifth periodic reports of the Russian Federation, CRC/C/RUS/4-5, 24 January 2014, para. 24.