EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

Information Note on the Court's case-law 214

January 2018

A.R. and L.R. v. Switzerland (dec.) - 22338/15

Decision 19.12.2017 [Section III]

Article 8

Article 8-1

Respect for family life

Respect for private life

Compulsory sex education in public schools for four to eight-year-olds: *inadmissible*

Article 9

Article 9-1

Freedom of conscience

Facts – In 2011 the first applicant and her seven-year-old daughter unsuccessfully submitted a request for the girl to be exempted from "sex education classes" in the second year of primary school. The classes were mandatory for children of between 4 and 8 under a directive of the Cantonal Education Department. The two applicants appealed to the Federal Court, which dismissed their appeal on the merits, while finding that Articles 8 and 9 of the Convention were applicable. The first applicant argued that the sex education was premature and that its mandatory nature interfered with the parents' role in educating their children.

Law

Article 8: The Court had never expressly found that Article 8 § 1 applied to the parents' right to provide for their children's education, which was mainly protected by Article 2 of Protocol No. 1 to the Convention (a Protocol not ratified by Switzerland), the *lex specialis* in such matters. It had always confined itself to interpreting Article 2 § 1 of that Protocol in the light of Articles 8 to 10 of the Convention.

This did not necessarily mean, however, that Article 8 § 1 could not be applied in the present case. By referring to "family life", its very wording suggesting more than mere cohabitation between parents and children, and could also extend to the freedom and duty of parents to educate and raise their children. Nor did the Court rule out that the education of a child, in so far as it constituted one of the fundamental aspects of a parent's identity, could be part of the parent's "private life".

However, even supposing that Article 8 was applicable to the first applicant's complaint, the complaint was manifestly ill-founded for the following reasons.

The interference in question was "in accordance with the law", as the Federal Constitution provided for a mandatory curriculum in State schools and the Cantonal curriculum clearly indicated that "Life and Earth Sciences" included health education and that the latter covered sex education. Sex education sought to protect the health of children. In the Court's view, since sexual abuse posed a real threat to the physical and mental health of children, against which they had to be protected at all ages, society undeniably had a particular interest in providing such education to very young children. This was all the more important as such children did not live in isolation, but were exposed to a whole range of external influences and information (including in the media), which might raise legitimate questions in their minds and which made it necessary to ensure that they were confronted, in a supervised manner, with the subject in question. The interference thus pursued legitimate aims.

As to whether the interference was necessary in a democratic society, the Court noted that, in order to interpret Article 8, it could take into consideration the principles arising from Article 2 of Protocol No. 1, even though that Protocol was not applicable to Switzerland (for a similar approach under Article 9 of Convention, see for example *Osmanoğlu and Kocabaş v. Switzerland*, no. 29086/12, 10 January 2017, Information Note 203).

The first applicant had not complained about the existence of sex education classes as such but only the fact that they were dispensed to children of between 4 and 8.

The Court was not unaware of the fact that the such young children were particularly sensitive and open to outside influence or that their relationship with their parents was of particular importance in those crucial years for their development. Moreover, Article 5 of the United Nations Convention on the Rights of the Child established a link between the evolving capacities of the child and the parents' freedom to give the child direction and guidance that States were bound to respect. It was thus appropriate to grant a particularly high level of protection to the parental education of young children. The complaint thus warranted an in-depth examination.

That being said, the protection of parental education provided for in Article 5 of the Convention on the Rights of the Child was not an end in itself, but always had to be conducive to the child's well-being.

That finding could be derived from the very text and spirit of the UN Convention, since it assigned to education the role of protecting children against all forms of physical or mental violence, injury or abuse, "including sexual abuse" (Article 19) and to prepare them for "responsible life in a free society" (Article 29 (d)).

These were the aims pursued by the school sex education in the Canton concerned, without there being any indoctrination of the pupils. The first applicant had not in fact alleged that the sex education lessons sought to influence the sexual morals of children. According to the very wording of the directive adopted by the education authority, school sex education could not serve to impose any social control or standardisation. There was nothing to suggest that the State authorities had disregarded this requirement.

As to the proportionality of the impugned refusal, the following reasons led the Court to find that, even assuming that Article 8 was applicable in respect of the first applicant, the Swiss authorities had not overstepped their margin of appreciation.

First, the national authorities had recognised the paramount importance of the right of parents to provide for their children's sex education. The directive itself expressly recognised the parents' "important role" and stated that the school's role was merely to "complement" the sex education provided by parents. Moreover, it stated that the complementary nature of the classes derived from the fact that they were not

systematic. The authorities had amended the directive in 2011 by introducing recommendations emphasising the non-systematic nature of the lessons, the teachers' task being limited to "reacting to children's questions and actions". In the present case – where the child had not actually attended any sex education classes –, there was no doubt that these recommendations had been followed.

Secondly, the argument that sex education lessons risked forcing information about sexuality onto children who had not yet spontaneously raised the subject seemed to overlook the dynamics at play in a primary-school class: the idea of responding to questions on sexual matters only when children asked such questions was not feasible in terms of actual teaching practice.

Thirdly, the competent authorities had dealt with the sensitive subject of sex education with due seriousness. By providing in a detailed manner, in the above-mentioned directive and recommendations, for sex education lessons adapted to the age and gender of the children, the Swiss authorities had shown significant equanimity in relation to the various interests at stake. In the case of the applicants, the cantonal authorities and domestic courts had given well-reasoned judgments, taking into account the child's interest while recognising the paramount role of parents in their children's education, including sex education.

Conclusion: inadmissible (manifestly ill-founded).

Article 9: The Court did not find it necessary to decide on the applicability of Article 9 of the Convention to the question of sex education, as the complaint had not been substantiated (the first applicant had merely referred, in a quite abstract manner, to the fundamental, ethical and moral values of the human person which she said were related to sex education, but without explaining in practical terms what values or how they would be affected by participation in sex education lessons).

In any event, a violation of that Article could be ruled out essentially for the same reasons as those given in respect of Article 8.

Article 9 § 1 did not grant parents who adhered to a particular religion or philosophy the right to refuse the participation of their children in public teaching which might run counter to their ideas; it merely prevented the State from indoctrinating children through such teaching. It transpired from the Court's findings under Article 8 that the competent authorities had not pursued such an aim and that they had respected the complementary nature of school sex education in relation to the education in such matters that was provided within the family.

Conclusion: inadmissible (manifestly ill-founded).

The Court also declared inadmissible the complaint under Article 14 taken together with Articles 8 and 9 of the Convention, mainly for non-exhaustion of domestic remedies.
